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NATIONALISM AND THE LEAGUE OF NATIONS TODAY*

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I. INTRODUCTION

The world today is appallingly interesting. It is interesting, because it is changing so fast. It is appalling, because almost every change we have witnessed in the course of the last years has been a change for the worse. As mankind is ever proceeding from the past, through the present, toward the future, all change may, in the purely dynamic sense of the term, be called progress. If, however, we seek to estimate the value of change in terms of human welfare, as also if we consider it in the light of the goals pursued, the most significant recent changes in the political and economic spheres are clearly reactionary.

For generations, and in some cases for centuries, all nations within the orbit of our Western civilization have, through wars and revolutions, been striving to secure for all their members greater physical and moral security, greater political equality, greater individual freedom. Greater security—that is, more assured protection against the violence of their fellow-citizens and against the arbitrary oppression of their governments. Greater equality—that is, less discrimination on grounds of race, of sex, of religious and philosophical creed and of social position. Greater freedom—that is, more latitude for the self-expression and self-assertion of the individual in the face of the authority of tradition and of the state. Guarantees for the protection of the fundamental rights of man, the abolition of arrest without trial and of imprisonment for debt, the suppression of slavery, the extension of the suffrage to all and thereby the subordination of the government to the will of the peo-

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ple (that is, of the majority of all the people), parliamentary control of the budget (that is, no taxation without representation), the recognition of freedom of thought, of speech, of assembly, of the press, the independence of the judiciary and the autonomy of the university—such are some of the ideals for which our fathers, grandfathers, and great-grandfathers fought, bled, and died. Such are some of the conquests of human dignity over barbarism, of knowledge over ignorance, of right over might, which they triumphantly achieved and which they proudly bequeathed to us. And such are some of the ideals which, after the greatest struggle in human history, we their children of the twentieth century, through stupidity and cowardice are, sometimes with the blind enthusiasm of mad fanaticism and sometimes with the dull resignation of impotence, disavowing, renouncing, abandoning. The individual, the family, the local or regional community, everything and everybody, is being sacrificed to the state. The state itself, once held to be the protector and the servant of the people, is in several countries of our Western civilization being turned into a weapon for oppressing its own citizens and threatening its neighbors, according to the capricious will of one or of a few self-appointed individuals. These individuals, whether they style themselves chiefs, leaders, or dictators, are all what free men of all times, in all climes, have combatted as tyrants. They are today acclaimed as heroes by hundreds of thousands of European youths, welcomed as saviors by millions of European bourgeois, and accepted as inevitable by tens of millions of European senile cowards of all ages.

If, as I expect to occur, I am accused of exaggeration, I beg my critics to take a sketch map of the world. Let them mark in black the areas subjected to régimes such as I have indicated and leave in white those which are governed in conformity with the ideals of freedom that inspired the British, American, and French revolutions of the seventeenth and eighteenth centuries. I accept their judgment as to the present state of the world, and particularly of Europe.

Is it surprising, under these circumstances, that the League of Nations, which some of its founders wished to call the League of Free Nations, should be undergoing a crisis so severe as to menace its very existence? The League of Nations is an attempt to realize, on the international plane, the ideals of government which its

founders rejoiced in within their own respective countries. Human freedom, guaranteed by the organized community against the aggression and the oppression of the violent few; human welfare, promoted by the spontaneous and orderly coöperation of all for the benefit of all—such were the national ideals which President Wilson, Lord Robert Cecil, General Smuts, Léon Bourgeois formulated in the Covenant for the benefit of the international community. As long as this conception of the good life, national and international, remains that of a sufficient number of sufficiently convinced and powerful members of the League, so long will the League endure. But only when it becomes that of the overwhelming majority of the human race and is recognized and proclaimed as such by their governments can the League truly prosper.

Students of the League of Nations in 1933 should realize to the full its present plight and seek to understand the reasons thereof. Especially is this true of those who study the League not merely with a desire to satisfy their own scientific curiosity, but also with the will to contribute to the success of its endeavors and to the triumph of its ideals. Official optimism, always a nauseous dish for the mind of the honest, if it could perhaps in prosperous times be excused as a useful stimulant for the will of the feeble, would today act as a sickening and deadly opiate on the minds and wills of all. Not only the friends of truth, but especially also the real friends of the League, should therefore today, meeting at its bedside, take full cognizance of the gravity of the patient's condition and inquire into the true nature and causes of its illness in order to be in a position to determine and to recommend the necessary remedies.

That the League is ill will doubtless escape the attention of no observer, no matter how casual, how superficial, or how blindly optimistic. To be sure, the new buildings are progressing, or—to avoid that ambiguous term—being completed. To be sure, committees and subcommittees are continuing to meet, interpreters to interpret, *précis* writers to draft minutes, officials to produce intelligent memoranda, and delegates to deliver lengthy speeches. To be sure, the states members of the League are continuing to pay their contributions, although somewhat less promptly and fully, and to send representatives to Geneva, although perhaps not as many nor as influential representatives as some years ago. To be sure, most of the political, administrative, and technical activities are being carried on, and some are achieving results truly useful for

the states themselves and for their mutual relations. To be sure, finally, the main conferences summoned by the League have never been attended by so many official delegations, and the coöperation of non-member states, particularly the United States and Soviet Russia, has never been as continuous, as intimate, and—one would like to be able to add with more confidence—as fruitful.

I would be the last to underestimate the real importance of all the work done by the League and its servants and, thanks to the League, by the states themselves, their governments, and their delegates. The very existence of the Covenant, even if its provisions are sometimes violated, and the very existence of the League, even if its recommendations are often disregarded, are politically valuable, as is morally valuable the conscience of the most inveterate sinner. They offer an occasion for international discussion which, even when it leads to no positive results in the form of agreements, does most helpfully contribute to mutual understanding. The ease with which such discussions are initiated and the atmosphere of orderly freedom and impartiality in which they are pursued are gains which the world owes the League, and which enlightened and unbiased pre-war statesmen and students never tire of emphasizing in the light of their own less fortunate recollections. Furthermore, besides this advantage which a knowledge of the past brings to our attention, there is another perhaps still more significant advantage which the future may reveal. The Covenant and the League, by their very existence, continuously offer the world the opportunity of constructive alternative policies to those which, in spite of the Covenant and of the League, are so generally and so disastrously being pursued today. When contemporary statesmanship shall have exhausted the cruelly disappointing possibilities of the exclusive nationalism to which it is condemning the world, it may well revert to the Covenant and find therein both consolations and exhortations similar to those which the surviving politicians of the Southern Confederacy, after the Civil War, doubtless found in President Lincoln's speeches and messages.

That the world is better off today for the League of Nations is obvious to my mind. But that the League of Nations is very badly off in a world disloyal to its Covenant and indifferent to its promises, strikes me as no less obvious. It is to a brief attempted diagnosis of the League's illness that the remainder of this paper will be devoted.

Besides, and overshadowing, its many varied activities, to which allusion has already been made and whose importance has already been recognized, the League has, in the course of the last year, been engaged in three major enterprises: the attempted peaceful settlement of the Sino-Japanese dispute by the Council and the Special Assembly; the attempted reduction and limitation of national armaments by the so-called Disarmament Conference; and the attempted world economic reconstruction by the Monetary and Economic Conference. Three major attempts, three major failures.

It is now my unpleasant but necessary task to show briefly, but quite ruthlessly, that, how, and why these attempts were failures. I find no better analogy to evoke than that of the dental surgeon and of his equally unpleasant, necessary, and ruthless task. A very discreet allusion, I hope, will suffice, when I say that no tooth is ever well filled unless the decayed cavity be completely cleared of all soft matter, regardless of the momentary comfort of the patient, and even of the life of some of his nerves!

II. THE SINO-JAPANESE CONFLICT

Of the three failures of the League about which I have now to report, that of the settlement of the Sino-Japanese conflict is perhaps the most serious in itself and the most far-reaching in its repercussions, as it is certainly the most spectacular.

It was a failure, first, because it led to an open breach of the Covenant, as well as of at least two other international treaties, by a state permanently represented on the Council. That the attitude of Japan toward China in Manchuria and in Shanghai and toward the League in Geneva was an example of the "open, just, and honorable relations between nations" which the signatories of the Covenant prescribed for themselves in its Preamble; that Japan displayed the will to make "of the understandings of international law" "the actual rule of" its "conduct among governments;" that her policy was characterized by the desire to maintain "justice and a scrupulous respect for all treaty obligations in the dealings of organized peoples with one another"—all this cannot honestly be asserted. The undoubted and much-stressed fact that the Chinese of today cannot be described as an "organized people" does certainly not relieve Japan of its international obligations toward China; nor would any responsible Japanese statesman before the outbreak of 1931 have claimed that it did so.

That Japan has since that date respected and preserved "as against external aggression the territorial integrity" of China, as she was bound to do under Article 10, cannot seriously be held by anyone. That the conflict was examined by the Council and by the Assembly at the request of China, that after much hesitation, delay, negotiation, and inquiry, the Assembly rendered the report called for under the provisions of Article 15, and that that report was "unanimously agreed to by the members . . . other than the representatives of one . . . of the parties to the dispute," are matters of common knowledge. That China accepted the report and complied with its recommendations, and that Japan was therefore legally debarred, under Article 15, paragraph 6, from "going to war" with her cannot be denied. In order therefore to free Japan, who pursued her aggression after the verdict of the Assembly, of the accusation of having violated her undertakings on this point, one has to claim that the continuance of the use of organized military force against complying China is not synonymous with "going to war." When a case can be made to rest on no better arguments than on such verbal quibbles, it is assuredly desperate.

Japan has openly broken her international pledges by initiating, pursuing, and bringing to a successful close an aggression against one of her neighbors, like her a member of the League, and by wantonly disregarding all contrary provisions of the Covenant. Her decision to leave a League of Nations so contrary in its fundamental principles and in the unanimous views of its so different members to the present temper of her government, is a tacit admission of the fact, if further proof were necessary.

For this first reason alone, the Sino-Japanese conflict has been a misfortune for the League. To have lost, morally through her felony, and materially through her resignation, a charter member, is for the structure of an already weak League a very serious blow. This, however, is not in my estimation the gravest aspect of the matter. The League was created to maintain peace, if need be among its own members. That one or several of them might resort to war in disregard of their pledges was foreseen and provided for by its founders. One may even say that the League would forfeit most of its justification if such an event could be dismissed as being without the realm of practical politics. That Japan has violated the Covenant is in every sense deplorable. But so far we have noted no fact that has humbled the League or shaken its authority.

The second and much more serious aspect of the dispute from the point of view of the League is that Japan violated the Covenant not only, as we have seen, with defiance, but also with complete impunity, and therefore, as far as one can judge historical events which have not yet run their full course, with complete success. Thereby she has dealt a crushing blow not merely to the structure of the League, but to its prestige and to its *raison d'être* in the eyes of the world. The machinery expressly set up under the Covenant for the maintenance of peace and the protection of the law-abiding has failed lamentably to function, or—what is perhaps more accurate but hardly more hopeful—it has functioned only verbally and not actually. Like a motor in action, disconnected from the car which it was intended to drive, the machinery of the League has been turning for nearly two years. But it has, amidst the protests, denunciations, complaints, and imprecations of its engineers, left stranded by the roadside the chariot of peace and justice which it was intended to propel on a course of triumphant achievement.

This failure is equally grave in its immediate cause and in its direct and indirect consequences. Its immediate cause is to be found in what may brutally but not inaccurately be called the disloyalty to the League of all the member states. As we have seen, in effect and in spite of all the legalistic subtleties which have been produced to disguise the fact, Japan resorted to war in disregard of her covenants against a state which had accepted the unanimous decision of the other members of the League. This very case is provided for under the Covenant by Article 16, the first three paragraphs of which have no other purpose than to organize the protection of the victim of unjustified aggression. Just because, for the reasons I am deploring, those provisions were hushed out of existence in the final stages of the Sino-Japanese discussion in Geneva, they shall be quoted *in extenso* here. They read as follows:

> 1. Should any member of the League resort to war in disregard of its covenants under Articles 12, 13, or 15, it shall *ipso facto* be deemed to have committed an act of war against all other members of the League, which hereby undertake immediately to subject it to the severance of all trade or financial relations, the prohibition of all intercourse between their nationals and the nationals of the covenant-breaking state, and the prevention of all financial, commercial, or personal intercourse between the nationals of the covenant-breaking state and the nationals of any other state, whether a member of the League or not.
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> 2. It shall be the duty of the Council in such case to recommend to the

several governments concerned what effective military, naval, or air force the members of the League shall severally contribute to the armed forces to be used to protect the covenants of the League.

3. The members of the League agree, further, that they will mutually support one another in the financial and economic measures which are taken under this article, in order to minimize the loss and inconvenience resulting from the above measures, and that they will mutually support one another in resisting any special measures aimed at one of their number by the covenant-breaking state, and that they will take the necessary steps to afford passage through their territory to the forces of any of the members of the League which are coöperating to protect the covenants of the League.

Japan, as we have seen, violated her covenants not to resort to war. But who, after examining carefully and frankly the situation in the light of the just quoted clauses, can in all intellectual honesty deny that Japan's example was followed by her fellow-members? Under paragraph 1 of Article 16, they undertook to apply certain specific sanctions to the covenant-breaking state, but in fact there has, on their part, been no "severance of all trade or financial relations," no "prohibition of all intercourse between their nationals and the nationals of the covenant-breaking state," no "prevention of all financial, commercial, or personal intercourse between the nationals of the covenant-breaking state and the nationals of any other state." And there has, of course, been no consideration by the Council, in pursuance of what would have been its duty under paragraph 2, of the "effective military, naval, or air force the members of the League shall severally contribute to the armed forces to be used to protect the covenants of the League."

On the contrary, far from being isolated and outlawed, as the Covenant—to say nothing of the Kellogg Pact—provides, Japan is being treated by her associates in the League with all the consideration due to an equal and powerful accomplice. Thus the failure of the international community to live up to its duties of self-protection in the person of each of its members, which is the immediate cause of the inefficacy of the peace machinery in the case of the Sino-Japanese dispute, has been a third factor of the League's weakness.

A fourth is to be found in the consequences of this collapse. By failing to protect China, the League has disappointed not only the Chinese victims of its impotence, but its other friends and supporters all over the world. By forfeiting their confidence in its ability to meet the emergencies it was essentially created to meet, it has

rendered immeasurably more difficult propaganda in its favor. When one realizes the importance of public opinion in international affairs, that loss which, in its turn, entails a diminution of the League's vitality, seems almost irreparable. Not the man in the street alone, but also all thoughtful and responsible statesmen, are tempted to conclude from the League's paralysis in the Sino-Japanese dispute that it can under no circumstances be looked to as a protector of the victims of any aggression that may take place in future. This view, which is very widely held, and has even been openly expressed in official League circles, is the major cause of the League's second failure, in the sphere of disarmament.

Before turning to that, we must seek to discover, behind the outstanding facts just recalled, the deeper causes of the League's impotence in the Sino-Japanese dispute. These causes, which I will state with the same frankness shown in describing their effects, explain and thereby to some extent may excuse the failings of the League.

The first of these causes I see in the deplorably disorganized state of China. When a country is palpably unable to govern itself, when even under the stress of foreign invasion its rival governments, generals, and armies cannot sink their differences in a common effort of national defense, when its principal leaders are so uncertain of their own policies and so fearful of the consequences of drastic action that they refrain from breaking off their diplomatic relations with the aggressor against whom they claim the protection of the rest of the world, then surely there is some excuse for the rest of the world if it is reluctant to engage its last resources in an attempt to secure that purpose.

A most unsatisfactory customer for the League China is, not only by reason of its internal state, but also by reason of its geographical position. It so happens—and friends of the League like to think that it is no mere accident—that Japan's victim is placed between two other great Powers, neither of which is a member of the League. Without the coöperation both of Soviet Russia on land and of the United States on the sea, it is difficult to conceive of a possible military action in favor of China against Japan. And without the coöperation of either, it is clearly impossible. Now, not only the military, but even the economic, coöperation of the United States and of the Soviet Republic was unavailable in Geneva. It was, in fact, so obviously unavailable that it was not even sought.

It is uncertain whether it would really have been welcomed in the leading capitals of Europe, even if it had been available. But who doubts that Japan's aggressive action was materially facilitated by the absence from the Council and the Assembly of the representatives of the Soviets, and that it was not substantially impeded by the intermittent and almost casual appearance of American observers?

These two circumstances alone might have explained the inability of the League to bring about a fair and peaceful settlement of the Sino-Japanese dispute. For neither of them could the League nor any of its leading members be made responsible. Had there been no other impediments, the lesson taught by the events would have been simple, or rather, if one may use the phrase, simply double. On the one hand, China would have been reminded once again of the wisdom of the saying concerning heaven's helping only those who help themselves. On the other hand, the League would once more have been made to realize the advantages, nay the necessity, of its becoming universal in membership.

But although the Sino-Japanese conflict has undoubtedly revealed these two impediments and brought home these two lessons, it would be a most superficial analysis that discovered no other obstacles and pointed to no other conclusions. No careful observer of the events, in Geneva, in London, in Paris, in Tokyo, in Nanking, and elsewhere, could fail to note that inhibitions of another order were also paralyzing the League.

On Great Britain, as the leading naval power, as the mistress of Hongkong, as the head of an empire including Australia, India, New Zealand, and Canada, and as the most important Western trader and financier in the Far East, rested the main burden of responsibility in the Council and in the Assembly. At no time had one the impression that British policy was determined essentially by the will to uphold the Covenant and to protect China. No British ship was moved. No word of direct and unequivocal warning was uttered. No consistent and persistent effort was made to enlist American and Russian coöperation. The British ambassador in Tokyo was reported as being not at all hostile to the action of Japan. Considerations relating to the security of British possessions and British dominions and the promotion of immediate British economic and political in erests were always paramount. In London, Japan seemed throughout to enjoy real popularity. When the

Foreign Secretary declared that under no circumstances would his government allow Great Britain to be brought into conflict with her former ally in the Far East, his statement was well received in the House and in the press.

Nor was the attitude of France fundamentally different. Mindful of the position of Indo-China in Asia, and far from indifferent to Japanese diplomatic support in Europe, particularly at the Disarmament Conference, her conception of the League as the essential guarantor of security and as the supreme supporter and enforcer of treaties seemed strangely limited to her own continent. Italy, whose rôle was modest, could not be expected boldly to oppose the policy of Japanese imperialism based on notions of racial superiority and of demographic expansion very familiar and very dear to her present chief. Germany, with so many irons in the fire on her own borders, did not dream of offending the Great Power of the Far East in the interests of prostrate China. As, in spite of her anarchy, China was an appreciable present market and a potentially important future market, no one openly abandoned her. But as Japan, with all her burden of international sins, was a still more active customer and a more formidable factor on the political chessboard, the attitude of the Great Powers of the League toward Tokyo was more that of outwardly aggrieved but really benevolent neutrality than that of stern and vigilant justice.

It was left to the minor states, and especially to Spain, Ireland, and Czechoslovakia, to uphold the principles of the Covenant. This they did with genuine energy, but of course with little risk to themselves, as with no decisive influence on the course of events in the Far East.

The sad but obvious fact was, and is, that all of the leading states were, and are, more or less openly subordinating to their immediate national interests their duties to the Covenant, to the League, and to the cause of world security and international justice. In this respect, the Sino-Japanese conflict has evidenced with more dazzling clarity than any other event the supremacy of centrifugal, national forces over the centripetal, world tendencies in our present civilization. Ever since the founding of the League, this supremacy has been the main obstacle to its progress; it, alas, may still prove its final undoing.

One could find a fourth, less tangible but perhaps not less fundamental, cause of the League's impotence in the general realization

of the unsatisfactory nature of the Covenant as at present interpreted as a means for peacefully bringing about necessary changes in international law. It is impossible here to go into the details of Sino-Japanese relations. They are lucidly summed up in the Lytton Report. But no reader of that remarkable document, which has done more than any other single factor to save the League's honor in all this dismal affair, can deny that Japan has a case against China. According to all historical precedent, and also to a natural sense of historical justice, Japan, by reason of the nature and density of her population and by reason of her political and administrative superiority, cannot indefinitely be held in check by the whole world. Unless and until the League devises some legal means of authorizing, regulating, and controlling normal and inevitable expansion, it will be exposed to outbursts of violence such as that of Japan in Manchuria.

As the safest, and in fact the only, means of preventing revolution nationally is to provide for constitutional methods of constitutional revision, so the prevention of international war imperatively demands the institution and effective application of methods of pacific treaty revision. The drafters of the Covenant, particularly President Wilson, were fully aware of this necessity. But it is questionable whether Article 19, which bears witness thereto, will prove a sufficiently elastic safety valve to forestall future explosions. Here also the pacific organization of mankind would seem to call for a greater measure of subordination of national sovereignty to the interests, needs, and rights of the world community. All of these circumstances, I believe, should be taken into account if one is clearly to understand and fairly to judge the impotence of the League in the settlement of the Sino-Japanese conflict.

III. DISARMAMENT

I come now to what I have called the second major failure of the League—that in the sphere of disarmament. Am I too pessimistic? Or at least, is it premature to speak of failure here?

To be sure, the League, which has been dealing with the topic for thirteen years, and the Conference for the Reduction and Limitation of Armaments, which has been in intermittent session for a year and a half, are far from admitting the failure. But are failures ever officially admitted in international affairs?

The unpalatable but indisputable fact is that the states of the

world are today spending more on their armaments in gold than they were before the war, and also than they were five years ago. That, in the present depression, this greater sum represents a smaller fraction of the world's income will be claimed by no one. Therefore, frankness obliges us to recognize that the League has thus far failed to achieve that "reduction of national armaments" which its members, in Article 8 of the Covenant, have declared to be necessary for "the maintenance of peace."

It may be argued, and in fact truthfully stated, that the "reduction of national armaments" contemplated in Article 8 was "to the lowest point consistent with national safety and the enforcement by common action of international obligations." That the present state of armaments is not above that point may be, and is being, asserted on the best of impartial authority. That is precisely the calamity. If national armaments have been and are increasing, and if they are not today above the level deemed consistent with national safety, it must be concluded that international security has been shaken and not consolidated since the drafting of the Covenant. From that conclusion it is unfortunately impossible to escape.

If, as some have always held, and as impartial observers are more and more unanimously conceding, disarmament cannot be achieved except as a by-product of the organization of peace and the consolidation of international solidarity, then it is at least probable that the failure of the League heretofore effectively to reduce armaments should be attributed to its failure to organize peace and to consolidate international solidarity. And so it is, in my view.

But, it may be objected, surely the efforts of the Disarmament Conference, the instructive and useful discussions of the French, American, British, and Soviet proposals, the tentative agreements already reached concerning the principle of equality, concerning a permanent Disarmament Commission, concerning qualitative reductions, not to mention the American offers of political coöperation in emergencies—surely all this is progress. It *is* progress on the road toward a fuller appreciation of the real difficulties and of the real conditions of disarmament. But it will be progress on the road to disarmament only if and when armaments cease to increase and begin to be reduced as a result of the overcoming of these difficulties and of the fulfillment of these conditions.

Today, in so far as Europe is concerned, the essentials of the

position as they appear to me are briefly the following. The most pacific nations are relatively the most formidably armed. The least pacific, or those whose present temper and professed policies are least compatible with the maintenance of peace, are as yet deprived of major armaments. Disarmament to a basis of equality between the two groups of states means therefore the weakening of the pacific nations and the relative strengthening of their potential aggressors. In the absence of a League of Nations, or of any other international organization willing and able to protect the victims of aggression, one is therefore led to choose between a policy of disarmament and a policy of peace.

To make myself perfectly clear, I would ask: Is there anyone within or without Germany who honestly considers the present German régime to be peaceful in its instincts, in its desires, and in its intentions today, and who believes that it would be peaceful in its acts tomorrow if it had the power to go to war with reasonable hope of success? Certainly the countless Germans with whom I have spoken in the past months, including several who are far from hostile to the present régime, are not of that opinion, no more than the authors of the official speeches one can almost daily hear over the radio or read in the papers. Now if such is the situation, if Germany is inhibited from disturbing the peace of Europe solely, or at least mainly, by the consciousness of her present military inferiority, is it the duty of France and her allies, is it their right, to disarm? Furthermore, is it to the interests of peace that they should disarm?

Not *peace through disarmament*, as one would hope and as the authors of Article 8 of the Covenant expected, is the saving formula today. But *peace or disarmament*—such is the tragic dilemma that faces contemporary Europe. It is all the more tragic since it is obvious that the present unfortunately salutary inequality in armaments offends one's natural sense of justice and cannot subsist indefinitely. But is it really a dilemma? My answer is: Yes, in the present anarchical state of international relations. No, in a world of pacific nations, or, if that be inconceivable, in a world so organized, so constituted, so federated, that each of its national members could rely on the support of the international community as a whole, or at least of the overwhelming majority of its associates, if attacked by an aggressive neighbor.

If that is utopia, then the League of Nations, which is based on

that fundamental conception of international relations, is utopia. "The world is even now upon the eve of a great consummation when some common force will be brought into existence which shall safeguard right as the first and most fundamental interest of all peoples and all governments, when coërcion shall be summoned not to the service of political ambition or selfish hostility, but to the service of a common order, common justice, and a common peace. God grant that the dawn of that day of frank dealing and of settled peace, concord, and coöperation may be near at hand!" These noble words were uttered, not by an irresponsible dreamer, nor by the head of a belligerent state as a stimulant for the morale of his troops on the battlefield, nor by an insincere demagogue bent on overthrowing the government of his day. They were uttered on May 27, 1916, by President Woodrow Wilson.

The "great consummation" then heralded has not yet come about. The "day of frank dealing and of settled peace, concord, and coöperation" then prayed for has not yet come. To some they seem even further removed in 1933 than they did in 1916. But the elements of the disarmament problem are the same today as then.

If you wish disarmament, you must work for the organization of peace. And if you really wish an effective organization of peace, you cannot tolerate the perpetuation of the riot of national sovereignties which is maintaining the world in a state of mutual suspicion and hostility, and is ever more transforming Europe into an armed camp.

IV. THE ECONOMIC CONFERENCE

Concerning the third major failure of the League, I shall be very brief. Not that I can share the reported opinion of the American Secretary of State, on his return home, to the effect that the World Economic Conference was "still alive and virile . . . and that it would eventually achieve success." Of course, "eventually" is a cautious term. But whether success is to be achieved in the course of the present year, as the statement seems to imply, or whether the Conference will be successful only when we shall no longer be among the living to applaud, there is no doubt that it has so far dismally failed.

Summoned to combat the depression, primarily by stabilizing the currencies and reducing the tariffs of the world, after the necessary preliminary solution of the international debt problem, the

Monetary and Economic Conference has not only failed to bring about any of the agreements foreshadowed on its agenda; it has actually left international economic relations in a more distressing state of uncertainty and confusion than they already were in when it convened. Nor is that either surprising or unexpected.

Ever since the great upheaval of the war, currencies have been unstable, tariffs have been rising, and all the states of the world have been drifting toward more or less openly avowed ideals of national self-sufficiency. Under the cyclical wave of prosperity which abruptly broke in the autumn of 1929, these anarchical and centrifugal tendencies were hidden from the view of the general public. But they were real, and they seemed inoffensive only to those who judge economic prosperity by the current rate of wages, the current price levels, and the current quotations of securities.

How a world which every advance of civilization and every material improvement tends to make more interdependent could hope to achieve lasting prosperity under a political régime which stressed and strove to realize the ideals of national independence also on the economic plane, is a mystery. The Economic Conference of 1927, meeting in the midst of what today seem almost unbelievably good times, was not blind to the dangers that threatened. Its warnings and its recommendations alike remained unheeded. The folly of economic nationalism, although deplored and denounced by nearly all, continued strangely enough to dictate the policy of nearly all. The inevitable result is the world as we see it today.

What is surprising is less that millions should be unemployed everywhere than that mankind should be able to continue to live without any increase in the death-rate. This is surely due not to the economic policies of the governments, but to the technical progress of industrial and agricultural production on the one hand, and of public hygiene on the other. Progress in these fields has been such as to enable the world economically to afford the folly of its nationalism. But, given that nationalism which unfortunately as yet shows no signs of abating, it was clearly an illusion to hope that an international conference, even if it had been well prepared by all the principal delegations, could in a month overcome the depression, or even lay the foundations for a future recovery.

V. CONCLUSIONS

Shall we conclude our consideration of this topic, shall we con-

clude our whole study, with an admission of the failure of internationalism? Only those who have followed me inattentively thus far could expect such a conclusion. Let the nationalists who are content with the world as it is speak of the failure of internationalism. Let those who delight in the triumph of might over right, as exemplified in the Sino-Japanese dispute, let those who rejoice in the ever-increasing burden and threat of national armaments, let those who revel in the sight of abandoned farms, of empty workshops, of impoverished schools and universities, of suffering families, of armies of unemployed—let these all join in hymns of hatred toward internationalism and in pæans in honor of triumphant nationalism. For nationalism is triumphant today, as are human humiliation, human anxiety, and human misery.

No, internationalism has not failed. What has failed is contemporary international statesmanship. It has failed because it has been unable or unwilling to practice that form, and to engage in that measure, of international coöperation which alone can save the world from the all too devastating evils and the all too obvious dangers of ruthless nationalism. What an internationalism too timid, too exclusively verbal, and too unimaginatively national has failed to give, we must demand of a bolder, wiser, and more generous conception of human relations. The League of Nations must go forward, from the modest beginnings of a Covenant too considerate of the traditions and prejudices of national sovereignty, toward the goal of world federation. Let its shy friends become bolder and its impatient critics more intelligent and more helpful. May our generation, which has already experienced miracles of destructive folly on every hand, live to witness and to perform the miracle of constructive wisdom which will unite all the peoples of the world into one living commonwealth of free nations!

SPECIAL INTERESTS AND THE INTERSTATE COMMERCE COMMISSION*

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I. COÖPERATION IN REGULATION

A conflict of interests is implicit in most administrative problems, and the successful adjustment of these forces within a predicated legal framework means that the purpose of the governmental agency has been achieved. This consummation is beset with difficulties. The interplay of economic and political influences must be examined in connection with the statutory and formalistic competence of a given governmental bureau if any understanding of the process of administration is to be obtained. Only if the problem is first narrowed to one field, and then focussed upon a single agency, can the component factors be brought to direct and concrete analysis. An effort will be made here to examine the Interstate Commerce Commission in terms of the group pressures that are exerted upon it in its regulatory capacity. The purpose is to discuss the nature of the relations that arise between a regulatory body and the interests touched by its authority and to call attention to the possibilities and problems inherent in such a contact. In short, What political and economic forces make up the environment of the Interstate Commerce Commission, and how does it adapt itself to this environment?

A survey of the relations of this federal agency with the nongovernmental groups concerned with transportation unfolds an immensely confused and complicated picture. In its economic aspects, transportation is so closely entwined in the very texture of our commercial, industrial, and social life that grouping of interests takes place at every level of integration. Regional interest groups range from those based on the immediate community to those following the lines of great natural divisions of the country. Other groupings differentiate themselves according to the type of transport industry, while the users in turn form a common interest group. Cleavages appear within this latter category as between big and little shippers, and direct or indirect users. Again, in any given transportation industry the group of financial interests, investors,

* To be concluded in the December issue.

bondholders, insurance companies, and others confront the occupational groups of trainmen, warehousemen, and managers.

This attempt at classifying the complex of interests involved perhaps assumes more significance if considered in connection with a specific case showing the conglomeration of parties with which the government is faced and the enormous administrative difficulty of bringing about any adjustment among the various groups. The coördination of motor transport case before the I.C.C. is in point.[1] The number and variety of interests testifying reflect the many aspects of economic and social life touched by this problem: bus lines, transfer companies, freight depots, furniture corporations, storage companies, merchant truckmen, team and truck owners, expressmen's leagues, truck drivers' and chauffeurs' unions, motor carriers' associations, warehouse distributors, motor truck clubs, coöperative livestock shippers, automobile dealers, gas companies, public utilities, and wholesalers and manufacturers. Steel, shade cloth, candy, rubber, biscuits, milling, brewing, printing and publishing—all felt that their interests were involved. Many appeared as organizations, others singly. The great corporate enterprises made statements: Remington Arms, International Harvester, Woolworth, the A. & P. stores, and even the Hearst papers. National and regional associations sent their spokesmen to the Commission: the Association of Railway Executives, the American Short Line Railway Association, the Western Traffic Executives Committee, the Southwestern Passenger Association, the New England Railroad Committee, the National Industrial Traffic League, the National Poultry and Refrigerators Express Association, the National League of Commission Merchants, the Chain Store Traffic League of New York, the American Newspaper Publishers' Association, the Eastern Confectioners' Traffic Bureau, and the Motorized Circuses of the United States. To this list must be added the half dozen or more great brotherhoods of railway employees.

Such a list gives some slight idea of the reaction from the business community that the consideration of an important phase of our economic life elicits. The Interstate Commerce Commission,

[1] Interstate Commerce Commission, Docket No. 23400, *The Coördination of Motor Transport*. (Listed in this report are to be found not only the interests represented, but also the lawyers speaking on their behalf. The list is an excellent place to find the array of legal talent employed by transportation groups.

in the course of discharging its weighty administrative duties, works in this intricate matrix of interests and can take no action without affecting a vast structure of interrelated forces whose adjustment may easily be upset by ill-considered action, and whose opportunities for conflict are well-nigh limitless.

It is possible to conceive of a purely economic solution of the transportation question in terms of service and operation, using the canons of efficiency as sole determinants. But the tangle of political and social interests is at once too significant to be ignored and too intricate to be summarily dealt with. Nor can it be assumed that the federal government stands over against the welter of transport and sectional groups as a single-minded and completely disinterested arbiter. The idea of the federal administration as having a unified interest in the transportation field is illusory, since there are groupings of interests forming complexes within the government itself. As the owner of the Alaska Railway and of barge lines, it presents a face quite different from that shown as a distributor of the mails. But in addition to its proprietary and its functional interests, the government has also a strong financial interest as a collector of revenue, e.g., from the taxation of gasoline and steamship tickets. It has also a distinct interest as the employer of innumerable agents in connection with its transportation activities. All of these relations may be classified under the business administration of the government respecting transportation, as contrasted with its regulatory responsibilities for the general welfare.

Such a pluralism of interests within the government itself accentuates the need for a national transportation policy at the same time that it renders understandable the difficulty of any unified direction. Commissioner Eastman, in his new rôle of coördinator, is confronted with a mammoth task. The creation of such an office is clearly a step in the right direction. The federal government in the past has failed to provide the necessary leadership, and, in the words of a recent authoritative study, "instead of being welded into a coördinated system, our various transport agencies are working more or less at cross purposes. Instead of a unified program of regulation designed to promote common objectives, we have a series of unrelated and often antagonistic policies carried out by a variety of government agencies."[2]

[2] H. G. Moulton and Associates, *The American Transportation Problem* (Washington, The Brookings Institution, 1933), p. 881.

Theoretically, the conception of the public interest stands over and above both the forces identified with transportation interests and those relating to the internal business administration of government, but an examination of the external relations of the government to the transport interests fails to reveal any well-defined norm as to what constitutes the public interest. However intangible the idea of the public interest may be as a general guide for administrative action, its influence is always imminent and may add the weight of the imponderable to a judgment arrived at upon wholly different grounds. The Interstate Commerce Commission is charged with the duty of interpreting the content of public interest as applied in specific cases. But the public interest is only explicit when, for example, a widespread strike or similar emergency threatens a complete dislocation of transport facilities. The public itself is directly concerned in the problem of resolving such a conflict and in restoring normal relations. In emergencies, the force of public opinion may thus serve as a rough guide, but the solution of problems less crudely posed inevitably devolves upon a representative body whose action is more continuous.

While Congress holds wide powers in respect to the regulation of commerce among the states, it is nevertheless bound by inherent limitations. By reason of its very composition, it cannot come directly to grips with the transportation groups it seeks to control. Congress can do little more than indicate general policies and establish certain norms, in the hope that through such means a procedure of regulation will result which will operate in the public interest. Viewed economically, it may be to the public interest that the cheapest and most efficient transportation system be established. But such standards may be balanced by Congress with considerations of national defense, the development of certain industries or particular regions, or the protection of certain classes. The powers and duties devolved upon special administrative agencies further indicate the direction regarded by Congress as tending toward the general welfare. Through its appropriating and investigating powers, Congress is enabled to control and check the operation of bodies, thus guiding them toward its conception of the public interest. The fact remains that the form and composition of a legislative assembly render it an awkward instrument for the direct execution and continuous scrutiny of the policies which it has prescribed. Judicial review has similar limitations, although

its decisions tend further to modify the interpretation as to what constitutes the public interest because of its concern with enforcing the traditional sanctions of private property rights.

The Interstate Commerce Commission, then, stands against this background of public opinion, congressional authority, and judicial review. It is charged with the positive task of administering legislative mandates in the public interest, subject always to possible check by the Supreme Court. These limits are evident and recognized, but yet allow a broad field for discretion. Heavy responsibilities devolve upon an independent administrative tribunal because of the complexity and technicality of the problems that must be met. The plane upon which the norms as to what constitutes the public interest are applied is far removed from the ambit of public opinion, and even from the representative assembly. The *milieu* is distinctly one of special interests, and the regulatory body lives in an environment of conflicts. It must function here, not in accordance with thin, vague concepts, but in terms of concrete situations where the real content of the public interest must be extricated from a maze of technical detail. Despite its broad legal powers, the Interstate Commerce Commission becomes in practice dependent upon the assistance of outside interests in meeting its responsibilities of regulation and could do but little without such assistance. How, then, can the public interest survive and receive fulfillment?

Harmonious resolution cannot take place through bureaucratic autocracy imposing the "national interest," nor yet through the exercise of compulsion over government officials by outside groups. The public interest has to be made effective in the process of composing the struggles of competing forces. As Laski has put it, "the state of our time must make its authority valid not by the sanctions it can enforce, but by the sense it creates in each of us that its activities are a genuine response to our experience."[3] It is essentially in the administration of technical detail that the force of this statement appears most clearly.

An important aspect of the Interstate Commerce Commission's work is, for example, concerned neither with legal coercion of private interests nor with political coercion of this regulatory body by organized groups, but simply with the problem of bringing about harmony between carriers and shippers so that an agree-

[3] *The Dangers of Obedience*, p. 90.

ment is reached and litigation before the Commission forestalled. Thus, despite the fact that one of its most important functions is the fixing of rates, the Commission coöperates with private organizations in avoiding the expense and delay of formal hearings. Each of the three groups concerned in every controversy—the carriers, the shippers, and the Interstate Commerce Commission—has set up agencies to aid in this process of informal settlement.[4] The Commission has established a bureau of informal cases and a bureau of traffic charged with the task of reducing the amount of formal rate litigation. The railroads, as a part of the nine major regional freight associations, have appointed standing rates committees. In conference with the National Industrial Traffic League, a procedure has been devised to give every shipper an opportunity to present his side of the case to the carrier before any change can be made in rates that affect him. The shippers have established in local and national trade associations and in local chambers of commerce, bureaus or committees concerned with adjusting rate controversies through conference and coöperation.

The Commission's bureau of traffic helps in the settlement of controversies concerning rates as between shipper and carrier and as between carriers over division of joint rates. The bureau receives complaints, either orally or in writing, and then seeks to bring the matter to the attention of all those who are affected. After each has had full opportunity to present his views, an informal opinion is handed down in writing by the officials of the bureau. Such expressions are not binding upon the Commission, nor do they prevent any of the parties from disputing such findings or resorting to litigation.

When matters are handled by conference rather than by correspondence, due notice is given by the bureau to all interested in the problem, and an opportunity is afforded such parties to present their views at a meeting usually held in the capital. It is the function of the bureau to bring out all of the facts by discussion or direct questioning with a view to effecting an agreement among the parties themselves, rather than to pass judgment upon the merits of the controversy. The director of the bureau reports that frequently the solutions obtained by these informal hearings prove

[4] For a description of the procedure, see *Informal Settlement of Railroad Rate Controversies*, issued by the transportation and communication department of the Chamber of Commerce of the United States (Washington, 1930).

more satisfactory than anything that could be done by the Commission as a result of formal proceedings.[5] This is because the Commission, in deciding a formal case, must act in strict conformity with a statutory authorization which necessarily limits its freedom of action, and which may result in a decision less pleasing to both parties than would a compromise adjustment involving no direct order.

The bureau of informal cases of the I.C.C. is designed to serve as an intermediary in settling through correspondence controversies between railroad companies and complainants. The informal complaints section assists in the process of adjusting differences, and its advice is in no way binding upon the parties, who may proceed to a formal hearing if they wish to do so.[6] Similarly, disputes concerning the reasonableness of tariffs may reach a voluntary settlement with the assistance of the special dockets section. More difficult cases, and those for which there is no ready precedent, may receive adjustment with the help of the board of reference. In these ways the commissioners are relieved of the problem of holding formal hearings on thousands of cases which would otherwise come up for action in the course of the year.

This coöperation among officials, carriers, and shippers in the adjustment of freight rates is symptomatic of the general attitude of the Commission toward the groups which it regulates, and it extends to other important branches of the Commission's work. The director of the bureau of service reports that his bureau follows a definite policy of seeking the greatest possible measure of coöperation between shippers and carriers,[7] and in respect to this policy the Commission coöperates with the railroads through the special agency of the car-service division of the American Railway Association.

The railroads have agreed to follow the directions issued by this body, created by their national association, and accept it as their statutory agent in all matters relating to car service. It functions as the collective voice of the railroads, and supplements the work of the Commission in directing and controlling transportation on

[5] *Thirty-fourth Annual Report of the I. C. C.* (1920), p. 42.

[6] For a detailed account of the functions of the bureau of informal cases, see the *Report of the I. C. C.* for 1916.

[7] See article by William P. Bartel, director of the bureau of service, on the work of his bureau, in *U. S. Daily*, Mar. 14, 1930.

efficient lines. The Commission has assisted this development and encouraged its extension into the field, where the car-service division has organized regional advisory boards, composed exclusively of purchasers of transportation.[8] Fourteen districts have set up such boards, and the aggregate membership is about 15,000. Within each district, the board strives to overcome difficulties of car service and to anticipate car requirements by meeting regularly with representatives of the railroads. Committees dealing with specific commodities keep in constant touch with railway officials, and apparently this form of coöperation has proved quite successful. The report of the Committee on Recent Economic Changes attributes the credit for better railway service in part to their activity, other factors not in themselves being sufficient to account for the improvement in service, particularly with regard to anticipation of needs in relation to seasonal or unusual movements.[9] Equally significant of this important development in relieving the Commission of much complex rule-making is a statement made by Chairman McManamy of the Interstate Commerce Commission, in addressing the American Railway Association.[10]

> One of the first duties of this Association was to provide . . . rules from which have grown our present rules of interchange and other rules established by this body, which, if just and reasonable, as required by the Interstate Commerce Commission, are the law. Paragraphs 10 and 11 of section 1 of the act makes it the duty of each carrier to establish, observe, and enforce just and reasonable rules, regulations, and practices with re-

[8] For discussion of the relations of the bureau of service to the car-service division of the A.R.A., see annual reports of the Interstate Commerce Commission from 1920. In its report for 1924, pp. 62–63, the Commission states that the boards were organized: "(1) to form a common meeting ground between shippers, local railroads, and the carriers as a whole, as represented by the car-service division, for the better mutual understanding of local and general transportation requirements, and to analyze transportation needs in each territory, and to assist in anticipating car requirements; (2) to study production, markets, distribution, and trade channels of the commodities local to each district with a view to effecting improvements in trade practices when related to transportation, and promoting a more even distribution of commodities where practicable; (3) to promote car and operating efficiency in connection with maximum loading and in the proper handling of cars by shippers and railroads; (4) to secure a proper understanding by the railroads of the transportation needs of shippers, that their regulations may fit shippers' requirements, and to secure understanding by the shippers and their coöperation in carrying out necessary rules governing car handling and car distribution."

[9] *Recent Economic Changes in the United States; Report of the Committee on Recent Economic Changes of the President's Conference on Unemployment*, Vol. I, pp. 301–302.

[10] *Railway Age*, Vol. 88, No. 25c., pp. 1548d 114 ff. (June 24, 1930).

spect to car service. This organization, having undertaken the task of establishing such rules for all carriers, is therefore a law-making body, and it is but fair to say that there have been but few instances in which the Commission has found it necessary to modify or change the rules of interchange which you have established.

The necessity for this coöperation of the interests concerned arises from a situation in which government officials are confronted with tasks of huge proportions and handicapped by lack of resources. It is impossible for them to rely solely on their own expert knowledge, however profound, and in the administration of the law they must obtain necessary information by sympathetic contacts with those in possession of it. Government experts must supplement their knowledge with the further expertness of the very interests regulated.

This is clearly shown in the attempt to deal with the problem of safety on the railroads. The Senate committee on interstate commerce discovered in 1890 that "out of every 105 men directly engaged in the handling of trains one was killed, and out of every twelve men so employed one was injured." The chief cause of the excessive number of fatalities was the type of coupler and handbrake used. Working conditions called for federal interposition, and led to the passage of the Safety Appliance Act of 1893. "It is no secret," states the present director of the bureau of safety, "that the passage of this legislation was vigorously opposed by the railroads." The roads had already adopted a standard type of automatic coupler and set up standards of equipment following the recommendations of the Master Car Builders' Association, and they felt that they were proceeding as rapidly as their finances would permit in installing air brakes. They resented the employment of legal pressure to accomplish measures already under way.

In effect, the statute had to be based on the work done by the Master Car Builders' Association, and the law sought to protect workmen by these standards. An interesting feature of the act left the standard height of drawbars to be determined and certified to the Commission by the American Railway Association within ninety days after the passage of the act, after which the duty was to revert, in case of failure to set up standards, to the officials of the Commission.[11] The Association lost no time in presenting its

[11] The constitutionality of this delegation of authority to the American Railway Association and the I.C.C. was expressly upheld in St. Louis and Iron Mountain Railway Co. v. Taylor, 210 U.S. 281 (1908.)

standards to the proper authorities, but the execution of the act as a whole was delayed, and in fact it did not become fully effective until August 1, 1900. The standards of the Master Car Builders' Association received general recognition and were put into operation in due course, the Commission itself being concerned chiefly with fixing the time at which rules were to become effective.

In prescribing these time limits, the Commission had to adjust the conflicting claims of the carriers and the brotherhoods. Delay, litigation, experiment, and the passage of supplementary acts set a slow pace for the development of a complete code of safety laws. The carriers repeatedly begged for extensions of time under the law for installing safety devices,[12] while the brotherhoods did not regard the enforcement of the law as sufficiently drastic and were critical of the I.C.C.'s endorsement of the Master Car Builders' Association with respect to standards. The director of the bureau of safety states that the brotherhoods sent a representative to Washington as soon as the law became effective, who "took it upon himself to speak for the employees and sought to dictate the manner in which the law should be administered."[13] It was impossible, of course, for a group of officials to sit at their desks in Washington and prescribe the type of safety appliances that should be installed. Many such contrivances were in the experimental stage. The Safety Appliance Act thus created a situation which made it necessary for the Commission to establish direct contact with the American Railway Association in order to administer the law effectually and by the most practical and least expensive methods.

In the beginning, there was, says Chairman McManamy, "some friction, and occasionally the discussions developed more heat than light. With experience came understanding and knowledge of each other's motives, until at the present time the laws relating to the operation of railroads are being administered with a degree of coöperation and effectiveness which equals, if it does not surpass, that between different departments of the same railroad."[14]

Coöperation over the safety problem was largely a question of testing the mechanical qualities of devices in practical experiments

[12] See, for example, Extension of Time to Comply with Safety Appliance Acts, 36 I.C.C. 370 (1915); Safety Appliances, 44 I.C.C. 303 (1917); Safety Appliances, 58 I.C.C. 655 (1920).

[13] *Railway Age*, Vol. 88, no. 24c., pp. 1454 D 115 ff. (June 20, 1930).

[14] *Railway Age*, Vol. 88, no. 25c., pp. 1548 D 114 ff. (June, 24 1930).

on a number of railways, and when Congress, by joint resolution of June 30, 1906 (Public No. 46), called upon the Interstate Commerce Commission to investigate and report on the use of block-signal systems and automatic controls, the Commission naturally turned to experts outside of the government. Four engineers of national reputation were appointed to serve on the block-signal and train-control board, and a member of the Commission's staff acted as secretary. Over a period of five years, the board examined plans and specifications and carried on its tests, recommending in its final report that the block system of control be required on all passenger lines, but that investigation be continued on the use of automatic train control. This was carried on by the bureau of safety, and during the war period another committee was appointed to investigate.

Section 26 of the act of 1920 gave the Commission authority to order the installation of train controls upon proper investigation, and the Commission reported that in the administration of this section it invited the coöperation of the American Railway Association. A joint committee of 20 members on automatic train control was organized, consisting of an equal number of representatives from the operating, engineering, and mechanical divisions and signal section of the American Railway Association. This committee worked in close and continuous coöperation with the chief of the bureau of safety of the I.C.C. and members of his staff, who took part in the proceedings, although not members of the committee. The work of investigation and experimentation proceeded steadily, the Commission ordering use of automatic train control in some cases and in others the railways doing the installation of their own accord, until the point has now been reached where it is possible to travel from Boston to Omaha on trains automatically controlled for every mile of the distance. Developments are still under way, and the continuing coöperation of carrier and regulatory authority remains the chief safeguard in dealing with the perennial problem of safety in travel.[15]

The American Railway Association has definitely coördinated its work with that of the Interstate Commerce Commission on all matters relating to automatic train control, signals, and allied

[15] American Railway Association, Bulletin No. 1, *Automatic Train Control* (Nov., 1930).

safety concerns.[16] Such relations promote the ends of both parties. The Commission can fix workable standards of safety only upon a knowledge of actual railroad experience and conditions. Since the railroads must submit to control, they desire that the regulations be framed intelligently. It sometimes happens that no one is in a position to prescribe precise specifications for safety devices. This was the situation with regard to power brakes. Accordingly, the committee on safety appliances of the American Railroad Association conducted elaborate experiments for four and one half years and spent hundreds of thousands of dollars in order to test various kinds of brakes. It was upon the basis of this private investigation that the I.C.C. was able to promulgate its regulations. In the whole problem of safety regulation, this contact between regulator and regulated has continued as the inevitable concomitant of administrative rule-making in a highly technical field.

This reliance of the ruler upon the aid of the governed comes out again and again in the work of the Interstate Commerce Commission. A body of government experts speedily reaches the end of its resources if left to cope single-handed with the problem of regulating so complex and extensive a system as that of transportation, where new developments are forever appearing. Thus even the statute which placed the transportation of explosives and other dangerous articles within the purview of the Commission specifically authorized that body to avail itself of the services of the bureau of explosives of the American Railway Association in the task of formulating proper regulations.[17] In much the same way, the railroads, acting through a committee of the mechanical division of the

[16] Similar coöperative work was done by the American Railway Association and the bureau of safety in adopting a uniform application of safety appliances to an improved design of box-cars. The jointly-formulated regulations were reported by the Commission to have "resulted in a uniform and material improvement in the condition of air-brake equipment" (*41st Annual Report of the Interstate Commerce Commission* (Dec. 1, 1927), p. 33.) In the past, the Association has established standards for various parts of brake equipment, including pressure retaining valves, brake beams, brake shoes, strength requirements and total leverage of foundation brake gear, air hose, hose couplings, hose-coupling packing rings, and gauges for checking couplings and packing rings.

[17] This bureau will make inspections and conduct investigations and will confer with manufacturers and shippers with a view to determining what regulations will within reasonable limits afford the highest degree of safety . . . The Commission will give due weight to the expert opinions thus obtained. Report of these investigations should be made to the Commission, with recommendations." *Regulations for the Transportation of Explosives* (revised Oct. 1, 1930), p. 4.

American Railway Association, are legally authorized to pass upon the specifications of tank cars. If upon investigation this body finds them satisfactory, their use is permitted, while in case of rejection the matter may be brought before the Commission for final action, at which due weight will be given to the committee's expert opinions.

The administration of the boiler inspection act and the locomotive inspection service further illustrate this willingness to base regulations on the experience and opinions of the parties affected. The director of this service points out that the requirements covering the construction, inspection, and repair of locomotives and tenders under the law are those established as "standard" by the American Railway Association, locomotive builders, and other authorities prior and subsequent to the enactment of the law. But this does not make the work of the Interstate Commerce Commission any the less necessary, nor surrender an essential function into private hands. The guidance of the state introduces the element of authority *per se*, since the voluntary character of the American Railway Association makes uniformity of observance difficult to achieve. It was because of the failure of the railroads to observe their own rules and standards that government action became necessary. Mr. McManamy, of the Interstate Commerce Commission, made this point in addressing the Association.

> Agreements may be reached with respect to proper rules, and they may be approved by a majority of your voting membership. However, a dissatisfied minority or an indifferent membership of the majority may, under the national system of railroad operation, render unsatisfactory or even unworkable the best system of rules and regulations that it is possible to devise. The authority, therefore, to see that the regulations which are established are just and reasonable, and that they are applied and observed with fairness and with justness, was lodged with the Interstate Commerce Commission. That, I think, is where it must rest if the rules are to be given their full force and effect.[18]

A legal sanction of this type is therefore necessary, but it remains without practical effect unless vitalized through the coöperation of the interests to be regulated and backed by the experience they possess. On the technical plane, determining the public interest becomes a purely pragmatic affair of discovering what can be done within certain limits. This thesis is submitted: that the greater the degree of detailed and technical control the government seeks to

[18] *Railway Age*, Vol. 88, pp. 1548 D 114 ff. (June 24, 1930.)

exert over industrial and commercial groups, the greater must be their degree of consent and active participation in the very process of regulation. The only alternative would be an identification of interests brought about by outright government ownership and operation. The Interstate Commerce Commission cannot exercise its great powers in a legal vacuum, issuing orders from afar, but must meet specific situations as they arise and settle them in accord with what is technically possible under the circumstances. A workable agreement demands the coöperation of those with special competence, and the administrative process finally becomes effective by drawing upon experts wherever available and by securing the practical assistance of the direct participators.

The questions considered thus far have not involved policies of vast economic importance, and have dealt with the Interstate Commerce Commission as an administrative agency rather than as a judicial tribunal. They form but one aspect of the body's contacts with extra-official interests, and there remains to be examined a far different set of relationships. The concluding instalment of this article will deal with pressure groups and the I.C.C.

STATE CONSTITUTIONAL LAW IN 1932–33, II*

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V. REVIEW OF EXECUTIVE AND ADMINISTRATIVE ACTION[84]

Review of administrative authority and procedure has at times some strange and unfortunate results. Such was the case when the railroads protested the payment of taxes levied by the state tax commission of Washington. When the issue was brought to the courts, a special master was designated to secure evidence and to make preliminary findings of fact and conclusions of law. The master found no actual fraud, but concluded that there was constructive fraud in fixing base values and in allocating such values to the counties. He also found gross over-valuation and a grossly excessive ratio of assessed to actual value.

With the master's report before it, the federal district court made the usual deferential statement to administrative officers in this field in asserting that great care must be taken not unduly to interfere with the discretion which is confided to the assessing and taxing agencies; within their jurisdiction, except in case of fraud or a clearly shown adoption of wrong principles, they are the ultimate guardians of certain rights. Then the court proceeded to condemn the methods of procedure followed by the tax commission in assessing railway property, and also to disapprove of some of the conclusions of the master. Among these conclusions, the master believed that reproduction cost could not be used as a criterion for tax purposes; but the court held that such cost may be considered a relevant factor in such cases.

After a detailed analysis of the procedure followed by the commission in making its assessments, the court decided that the law would not tolerate the values fixed by the commission, and that certain assessments, "when measured by any standard which is at all permissible, are so grossly excessive as to give rise to the presumption of fraud in law." Finding the commission's assessments illegal, the court simplified matters a bit by deciding that the logical next step seemed to be for the court to place a valuation upon the properties of the companies respectively in order to determine the amount of the relief to be granted. "Happily in the discharge of this duty," said District Judge Webster, "I am in a somewhat broader field, in that I am not hampered by restrictions which the law places about me in reviewing the actions of assessing and taxing officials.

* The first instalment of this article appeared in the August issue.

[84] Cf. Marshall E. Dimock, "American Administrative Law in 1931," in this REVIEW, Vol. 26, p. 894, and note on "Judicial Control of Administrative Agencies in New York," *Col. Law Rev.*, Vol. 33, p. 105 (Jan., 1933).

In valuing the property myself, I have more freedom of choice in selecting and appraising relevant factors of value and in the adoption of methods which, in my judgment, are best calculated to reflect reliable and trustworthy results." An attempt was then made, so it was asserted, to arrive at a composite view based upon all relevant elements, and to give to each in the exercise of sound judgment that weight and consideration which the peculiar facts of the case justified and required.

Using a rough and ready method of calculation, which at least had the merit that it was expressly formulated, the court estimated that 40 per cent of the valuation should be on stock and bond values, 40 per cent on the capitalization of net operating income, and 20 per cent on reproduction cost. By this newly discovered compound, it was determined that the property of the Northern Pacific Company was over-assessed more than twenty-two millions, or 21½ per cent; the Milwaukee System, over fifteen millions, or 43¼ per cent, and the Spokane, Portland, and Seattle Co., nearly nine millions, or approximately 32¾ per cent.

Having been told exactly what the method of assessment should have been, and just how much the property of each road was over-valued, we are again assured that "it is not the province of courts, in such proceedings attacking the official conduct of legally constituted administrative agencies or boards, to set up their judgment on the facts for that of the officials to whom the duty of finding the facts is confided by legislative enactment." But to be sure that this dictum might not mislead it is affirmed as "well settled that the assessment of property for taxation is a judicial function."[85]

The unusual features and implications of this decision, particularly as to the relative duties and functions of tax commissions and courts, and as to the injection of reproduction cost formulæ into tax procedure, cannot be discussed in this article. But if even a small part of the expense, delay, and inconvenience, let alone the consequent paralysis of public regulation, which resulted from the introduction of the reproduction-cost hypothesis into the realm of utility regulation, should follow from its use in tax procedure, it is to be hoped that this decision may not serve as a precedent for other courts.[86]

The discretionary authority of examining and licensing boards was in-

[85] Northern Pacific Ry. Co. v. Adams Co., 1 F. Supp. 163 (July, 1932).

[86] As to the effects of such proceedings on the mode and methods of state taxation, with a fruitful field for attorneys, engineers, and economists, it may be noted that the master's hearings were held from June, 1927, to September, 1928, and that the evidence was completed in January, 1929. There were 2,944 exhibits, varying from one to 1,000 sheets, and the entire record weighed nearly a ton. Approximately five years after the hearings were begun, the district court rendered its decision. Perhaps so much time and elaborate technique were considered justifiable when nearly fifty million dollars presumed over-valuation was involved.

terpreted in two cases involving the definition of "unprofessional conduct." In California, the right of the legislature in regulating the profession of dentistry to limit the practice to natural persons was upheld. The effort to make a distinction between the professional and scientific phases of dentistry, which it was conceded are subject to regulation under the police power, and the purely business side of the practice, which, it was claimed, could be conducted by a corporation or an unlicensed person, was held to be an evasion of the reasonable purposes of the dental act and to open the door to dangerous commercial exploitation.[87]

Where the license of a physician was revoked for placing advertisements in a paper, the determination of the board was set aside by the court on the ground that the license of a physician can be revoked only as a result of a breach of law. The right of revocation was granted to the board on the grounds of "immoral, unprofessional, or dishonorable conduct." It was not within the board's scope of powers, thought the court, to supplement the statute in defining "unprofessional conduct" with the canons of professional ethics of the American Medical Association.[88]

When Connecticut attempted to regulate the motor vehicle junk business by requiring the issuance of a certificate of approval by the commissioner of motor vehicles, the supreme court upheld certain features of the act, but declined to approve the broad powers of the commissioner to determine whether such business was required by the interests of the municipality and would unreasonably depreciate surrounding property. This authority was declared to make judicial determinations dependent on an administrative official's opinion.[89]

In proceedings for the removal of a city assessor by the city commissioners, it was held that such proceedings are quasi-judicial and necessarily require all the essential elements of a fair trial. The statute limited removal for cause with the preferment of charges and an opportunity for a hearing. Evidence relating to removal, the court contended, was not presented and passed upon in "legal form," and hence the removal was void. What was demanded was a common law hearing, with witnesses testifying under oath, and with all the opportunities to rebut, cross-question, and answer formal charges.[90]

[87] Parker v. Board of Dental Examiners, 14 P. (2d) 67 (Sept., 1932). See dissent of Justice Langdon, who contended that the interpretation of the act which permitted for many years the operation of corporate dental systems should not be set aside by a mere change in the application of the term "unprofessional conduct."

[88] Sapero v. State Board of Medical Examiners, 11 P. (2d) 555 (Colo., April, 1932).

[89] State v. Kievman, 165 A. 601 (April, 1933).

[90] State v. Board of City Com'r's., 245 N.W. 887 (N.Da., Aug. and Dec., 1932). J. Burr and C. J. Christianson dissented on the ground that there was a great deal of evidence before the commissioners on which their decision was based, and that

The death of the superintendent of public instruction of Kansas during the temporary absence of the governor from the state on other than official business, and the attempt of both the governor and lieutenant-governor to fill the position, required a bit of judicial umpiring. The governor made an appointment by wire from New York, and directed his private secretary to send a requisition for an appointment to the secretary of state. The lieutenant-governor also made an appointment, and issued a commission, acting on the theory that the governor had no authority to perform any official act while he was outside of the state. Such temporary absence of the governor was held not to constitute "disability" so as to permit the lieutenant-governor to assume the functions of governor. For such a transfer of authority, there must be a real emergency, and except under extraordinary circumstances the lieutenant-governor must communicate with the governor. The appointment made from New York was held to have no effect, but the governor's appointee was awarded the office.[91]

Summary procedure in the confiscation of property was condemned in voiding a statutory provision for the confiscation of an automobile seized while transporting malt extracts on which a tax was unpaid, because it deprived an innocent holder of a conditional sales contract of his property without due process of law. The statute was also considered defective, since no notice was required either to the owner or to any interested person.[92] Similar proceedings under a state narcotic act for the forfeiture of vehicles transporting narcotic drugs, without providing for a hearing to the owner, were held void. The title of the state to property under such circumstances was declared to be inchoate prior to a judicial determination of the forfeiture, since neither the legislature nor the courts can dispense with the constitutional requirements of notice and hearing.[93]

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what the majority of the court was doing was to insist on substituting their judgment on the sufficiency of the evidence. See this REVIEW, Vol. 26, p. 673. In Hoyt Bros. v. Grand Rapids, 245 N.W. 509 (Dec., 1932), an ordinance was held void authorizing the city manager to grant or withhold permits for soliciting funds for charitable purposes on determination of whether a charity is "worthy" and applicants are "fit and responsible," because it was considered a grant of arbitrary power.

[91] Markham v. Cornell, 18 P. (2d) 158 (Jan., 1933).

[92] Finance Sec. Co. v. Conway, 146 So. 22 (La., Jan., 1933).

[93] People v. Broad, 12 P. (2d) 941 (Calif., July, 1932). Sexual sterilization acts were passed upon in two cases. A North Carolina act authorizing the sterilization of mentally defective persons was declared void as not providing due notice and hearing. On this ground the decision of Buck v. Bell, 274 U.S. 200 (1927) was distinguished. Brewer v. Valk, 176 S.E. 638 (Feb., 1933). On the other hand, a statute providing for sterilization of certain patients of state institutions afflicted with re-

VI. TAXATION

Whether an income tax is a property tax, and as such is subject to all the constitutional limitations as to equality, proportionateness, and uniformity in taxation, or whether it is an excise tax, and hence not subject to the usual constitutional requirements, continues to baffle the lawyers. For a long time, such a tax was regarded as an excise tax, and not within the constitutional categories.[94] But the federal Supreme Court changed the course of judicial decision by holding that an income tax is a property tax.[95] Then federal and state governments were obliged to use the amending process to authorize income taxation.[96] It still appears to be an open question whether an income tax is a property tax or an excise tax.

A special session of the Idaho legislature passed an income tax law following in certain respects the plan of the federal law. Difficulties were put in the way of the enforcement of the act by state officers, and through a mandamus the supreme court was called upon to determine its constitutionality. The state constitution requires that all taxes shall be uniform upon the same classes of subjects, and with this provision the court thought the question was: "Is an *ad valorem* tax the exclusive method of taxation available to the state?" Since at the time the constitution was formed a tax on income was not considered a tax on property, and since income never had been assessed or taxed as property in Idaho, the court held that it was the intention of the legislature to levy an excise, and not a property, tax. "Upon a complete survey of the field of precedent," said the court, "we have reached the independent conclusion that income is not property for the purposes of taxation under the provisions of our constitution . . . we find a legislative definition in line with the great weight of the decided law."[97]

But when the Tennessee legislature placed a graduated tax on all sorts of incomes, the supreme court of the state held it void, whether regarded as a property or as a privilege tax. If a property tax, the justices thought

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current hereditary insanity was held not to confer judicial powers on an administrative body, nor to inflict cruel or unusual punishments, nor to violate the due process of law requirement. *In re* Main, 19 P. (2d) 153 (Okla., Feb., 1933).

[94] See Featherstone v. Norman, 153 S.E. 58 (Ga., 1930), and Hattiesburg Grocery Co. v. Robertson, 88 So. 4 (Miss., 1921), for survey of pertinent decisions. See also "The Constitutionality of the Illinois Income Tax Law of 1932," *Univ. of Chicago Law Rev.*, Vol. 1, p. 126 (May, 1933).

[95] Pollock v. Farmers' Loan & Trust Co., 157 U.S. 429 and 158 U.S. 601 (1895).

[96] State v. Frear, 134 N.W. 673 (1912), and see Henry Rottschaefer, "A State Income Tax and the Minnesota Constitution," *Minn. Law Rev.*, Vol. 12, p. 683. (June, 1928).

[97] Diefendorf v. Gallet, 10 P. (2d) 307 (Mar., 1932). A careful review of the authorities, Justice Leefer believes, indicates "that in only one jurisdiction, Alabama, has the rule that net income from all sources is property been upheld."

the act violated the equality and uniformity clauses of the constitution. If a privilege tax, the constitutional limitations must be strictly applied, namely, that the legislature shall have the power to levy a tax upon incomes derived from stocks and bonds that are not taxed *ad valorem*. According to this express limitation, the legislature is accorded the authority to tax only one class of incomes. The court seemed pleased to exercise its duty not to permit the taxing power "to break through the solitary substantial protection afforded the taxpayer by the constitution."[98]

Because the constitution of Illinois provides that the legislature may impose only occupation, franchise, privilege, and property taxes based on value, the supreme court declared void an income tax law. It was charged that the levy under the law was not in proportion to value, did not operate uniformly, and the tax burden was not equalized thereby. The court observed that it was the evident intention of the framers of the 1870 constitution to limit the legislature to the same sources of revenue that were approved in the constitution of 1848. The revenue system having been based in the past on a general property tax, it must continue so to be based, until a new tax system is approved by the people. No specific authority being granted to levy an income tax, the assumption is deemed warranted that no such tax was considered as within the constitutional grants. Though 17 states have managed by constitutional amendments, or by a liberal interpretation of the provisions of their constitutions, to levy some form of income taxation, it is dogmatically decreed that income is property for purposes of taxation and that any attempted levy of such a tax must meet all of the special requirements and limitations of the constitution relating to property taxes.[99]

A house used by a college fraternity as a home while attending college was considered not a building used exclusively for "literary, educational, or scientific purposes." Hence a statute exempting from taxation property used exclusively by the college or university society as a dormitory was held void. The relation of the use of the building to education was not so direct and immediate as to bring it within the tax exemption provisions of the constitution.[100] The rigor of these constitutional provisions, state judges maintained, cannot be relaxed, even when important public services are at stake. With a railway in the hands of a receiver and about to

[98] Evans v. McCabe, 52 S.W. (2d) 159 (July, 1932).

[99] Bachrach v. Nelson, 132 N.E. 909 (Oct., 1932). For comments on this case, consult "The Constitutionality of the Illinois Income Tax Law of 1932," referred to *supra*, note 94. For a different interpretation under similar constitutional provisions, see Stanley v. Gates, 19 S.W. (2d) 1000 (Ark., 1929).

[100] Alpha Tau Omega Fraternity v. Board of County Com'rs., 18 P. (2d) 573 (Kan., Jan., 1933).

discontinue operation, the city of Baltimore sought authority to exempt the company's property from taxation. The act granting such authority, however, was declared void as violating the equal protection and the uniformity clauses of the state constitution.[101]

A city, in order to meet payments on defaulted bonds and to maintain its credit, attempted to create a bond guaranty fund. But the statute authorizing the procedure was declared void on the ground that deficiencies in local improvement district assessments cannot be paid from general taxes without providing notice to the taxpayers. Taxpayers, it was asserted, may not be generally made liable for the payment of local assessments. Two judges, dissenting in part, could see no basis for the requirement of notice for a general tax, but the tax was invalid in their opinion because it was not for a public purpose.[102] Several courts have sustained similar statutes,[103] and the reasons for annulment seem unsubstantial.

It is a well established doctrine that special assessments against property owners who share the expenses of local improvements must correspond as nearly as possible to the benefits conferred upon the owners.[104] But in practice courts usually refuse to interfere with such assessments on the ground that the roll, as approved by the council acting in good faith, should be deemed conclusive. This practice appeared to be so seriously departed from that three justices protested when the general rule was too strictly applied in a Michigan case.[105]

An ordinance levying a sales tax on electricity, gas, water, and telephone service, with certain exemptions and distinctions based on the amount to be paid by consumers, the funds to be used to retire outstanding indebtedness of the city, was held not to violate the equal protection clauses. The ordinance was deemed reasonable since the levy was upon the consumption of commodities which in their distribution are necessarily transported by wires upon, and pipes under, the public ways of the city.[106]

VII. MISCELLANEOUS

1. *Lack of Proper Titles.* The most frequent method of attack on the constitutionality of state enactments continues to be the objection that

[101] Mayor and City Council of Baltimore v. Williams, 61 F. (2d) 374 (Oct., 1932). For the reversal of this decision by the Supreme Court of the United States, see Williams v. Mayor and City Council of Baltimore, 53 S.Ct. 431 (March, 1933).

[102] Oregon Short Line R. Co. v. Berg, 16 P. (2d) 373 (Ida., Dec., 1932).

[103] For citation of cases, see *Harvard Law Rev.*, Vol. 46, p. 860 (March. 1933).

[104] Norwood v. Baker, 172 U.S. 269 (1898).

[105] Dix-Ferndale Taxpayers' Assn. v. City of Detroit, 242 N.W. 732 (June, 1932). Cf. *Iowa Law Rev.*, Vol. 18, p. 99 (Nov., 1932).

[106] Herriot v. City of Pensacola, 146 So. 654 (Feb., 1933).

the title does not sufficiently cover the provisions of the act.[107] This method of attack, which often appears rather futile[108] as a device to check legislative authority, resulted in the invalidation of a considerable number of laws during the year. An amendment to an act, attempting to regulate the sanitary wrapping of bread, was held void as containing more than one subject,[109] and a proviso denying participation by officers in fees collected was held inoperative because not embraced in the title of the act regulating the speed of motor vehicles.[110]

The usual dictum of courts relative to titles that acts will be upheld unless a substantive matter entirely unconnected with the named legislation is included in the bill seemed to be ignored when the supreme court of Pennsylvania held an act void authorizing the construction of a soldiers' memorial bridge in so far as it authorized the payment of consequential damages to property not taken, since the title of the act merely provided for "acquiring" any property necessary by eminent domain.[111] Practice seems rather to indicate that the title of an act must express the subject comprehensively enough to include all provisions in the body and to indicate the purposes thereof.[112]

[107] Objections to the form or phraseology of the title were raised in many cases not considered in this summary.

[108] See Browne v. Baltimore, 161 A. 24 (June, 1932), and Atlas Powder Co. v. Detroit Fidelity & Surety Co., 51 S.W. (2d) 841 (Tenn., July, 1932), in which the court said: "If the words in a title, taken at any sense or meaning which they will bear, are sufficient to cover the provisions of the act," it will be sustained. See also Katz v. State, 54 S.W. 130 (Tex., Oct., 1932).

[109] Egekvist Bakeries v. Benson, 243 N.W. 853 (Minn., July, 1932). The original act regulated the weight of bread, and it was held that the amendment could not deal with a new subject, namely, wrapping. An amendment must be germane to the original act. See note, *Iowa Law Rev.*, Vol. 18, p. 101 (Nov., 1932), suggesting that "in last analysis the question is one of strict or broad construction. The decisions cannot all be reconciled, even in the same jurisdiction."

[110] Board of County Commissioners v. Giddings, 14 P. (2d) 418 (Okla., Sept., 1932).

[111] *In re* Soldiers' and Sailors' Memorial Bridge, 162 A. 309 (June, 1932). For a difference of opinion as to whether a title is broad enough to cover legislative provisions for labeling food containers, see *ex parte* Baer, 15 P. (2d) 489 (Calif., Oct., 1932).

[112] Nash Finch Co. v. Farmers & Merchants Bank, 246 N.W. 637 (S.D., Feb., 1933), holding void an act declaring a draft, given in payment of clearings before a bank's failure, a preferred claim. Among the acts invalidated are the following. An act relating to corporations, in so far as purporting to repeal statutes providing for organization of partnership associations. Voorhies v. Hill-Davis Co., 245 N.W. 579 (Mich., Dec., 1932). The clause that unconstitutionality of provisions for registration of rural voters should not affect those as to city voters was held ineffective as not embraced in the title. Atherton v. Fox, 54 S.W. 11 (Ky., June, 1932). In this case, with two judges dissenting, an act relating to registration of voters was held void. A provision for the semi-annual payment of municipal taxes and allowance of

2. *Restrictions on Legislative Action.* State constitutions usually restrict legislative action by a special session to subjects designated in the proclamation of the governor calling the session or presented during the session by the governor. A Texas act passed at a special session withdrawing from sale or lease river beds on public school lands was attacked as void because not within the scope of the governor's proclamation calling the session. Contrary to the usual holding in such cases, the court decided that since the statute was regular on its face and had the governor's approval, it would not consider whether it came within the scope of the proclamation.[113]

Constitutional limitations regarding the salary and expenses of legislators lead to considerable difficulty and not infrequent evasions. With definite restrictions limiting payments to members of the legislature to mileage and a *per diem* allowance, the Iowa legislature in 1872 and 1911 abandoned the *per diem* basis and adopted in lieu thereof fixed salaries and mileage. Thus by long continued practice the salary fixed by the legislature was considered equivalent to a *per diem* payment. But a recent statute was held void providing that legislators and the lieutenant-governor should be paid actual necessary expenses incurred, not exceeding $500, while in attendance at a session of the legislature. This payment was held to contemplate "personal expenses," and not "legislative expenses," and therefore amounted to additional compensation. Whether the acts of 1872 and 1911 violated the express language of the constitution, the court did not feel called upon to determine.[114]

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discount thereon was held void. Bedford Corporation v. Price, 166 S.E. 380 (W. Va., Nov., 1932). An act was declared void where its title stated that its purpose was further to define the attempt to commit arson, but instead changed the penalty only. Rolner v. State, 55 S.W. 98 (Tex., Nov., 1932). A statute abolishing the position of deputy insurance commissioner. Boggers v. Johnson, 167 S.E. 82 (W.Va., Dec., 1932). An act requiring the clerk of the court to deposit funds at interest, in so far as applicable to private funds deposited in the registry of the court. Perry v. Sanders, 145 So. 116 (La., Nov., 1932). An act abolishing the positions of the state board of education and its advisory members, Moats v. Cook, 167 S.E. 137 (W.Va., Dec., 1932), and one taxing operators of cigarette vending machines. *Ex parte* Turner, 55 S.W. 833 (Tex., Dec., 1932). A provision including persons operating their own motor vehicles for transportation of their own property, where title related to regulation of private carriers by motor vehicle for compensation. People v. Montgomery, 19 P. (2d) 205 (Colo., Jan., 1933). An act entitled as one to amend the charter of a town, which in its body regulated establishment of cemeteries. Rosehill Cemetery Co. v. City of Chicago, 185 N.W. 170 (Feb., 1933).

[113] Jackson v. Walker, 49 S.W. (2d) 693 (April, 1932). For a brief summary of decisions relating to this issue, see *Harvard Law Rev.*, Vol. 46, p. 725 (Feb., 1933).

[114] Gallarno v. Long, 243 N.W. 719 (June, 1932). The South Dakota cases of State v. Reeves, 184 N.W. 993, and Christopherson v. Reeves, 184 N.W. 1015 (1921), were disapproved. For different reasoning, see Scroggie v. Scarborough, 160 S.E. 596 (1931).

3. *Review of Initiative and Recall Proceedings.* The effort to prevent by injunction the paying of funds for holding an election on an initiative petition relating to a proposed income tax led to a five-to-four decision by the Oklahoma supreme court. A majority of the court held that a court of equity will not assume jurisdiction to determine in advance whether the proposed act is submitted in accordance with the law. Declaring that a political question was involved, an earlier case was quoted to the effect that "the power to propose and adopt a proposition of any nature and to amend their constitution is vested in the people of the state, and in the exercise of such power they constitute the legislative branch of the government and are not subject to interference or control by the judiciary."[115] The issue of the validity and sufficiency of the proceedings was pending before the court for future decision.

The determination of the sufficiency of the petition was to be made by the secretary of state, with an opportunity to hear witnesses and with an immediate hearing in the supreme court. Such a hearing, in the opinion of the court, involved a review on the record, and not a trial *de novo*. As there was no statutory provision to stay the proceedings of the secretary, pending an appeal on the sufficiency of the petition, the court was unwilling to intervene.[116]

For the dissenters, Justice Riley claimed that the case was an original proceeding and that, being such, the trial should be *de novo* with full investigation and hearing. It was also believed that the decision should be made at once as to whether the election was called legally, and that when an appeal was taken to the supreme court, the governor had no authority to issue a call for an election until the cause was determined.[117]

Customary rulings that courts will not interfere by equity in the holding of elections is thought to be qualified in relation to recall proceedings. In an attempt to recall a city commissioner, injunction was held an appropriate remedy to restrain recall proceedings from being carried out without substantial compliance with the statutes. The general rule was considered subject to modification on account of the fact that recall proceedings are in derogation of the statutory tenure of office, prescribed for the officer to be recalled.[118]

Dealing with a controverted issue regarding recall procedure, the North Dakota supreme court held that electors who have signed recall petitions which were filed with the proper officer are not entitled to with-

[115] For supporting decisions, McAlister v. State, 219 P. 134 (1923), and Duggan v. City of Emporia, 114 P. 235 (1902), were cited.

[116] *In re* Initiative Petitions, 6 P. (2d) 703 (Dec., 1931).

[117] See State v. Ollcott, 125 P. 303 (Ore., 1912).

[118] State v. Ledder, 143 So. 148 (Fla., July, 1932). The court cited and followed City of Watts v. Superior Court of Los Angeles Co., 173 P. 183 (1918).

draw signatures after filing and before election. The constitutional provisions relating to the recall are self-executing, and are treated as mandatory; hence, when an elector signs a recall petition, he does so under the power reserved to him by the constitution. When he and his co-signees file their petition, they determine the time when it shall become effective. Though there is a marked diversity of holding on the right to withdraw signatures on recall petitions, the majority of the justices believed that the language of the constitution allowed no discretion in the matter.

Chief Justice Christianson and Justice Birdzell presented an interesting analysis to the contrary. According to their view, names may be withdrawn freely before filing and may not be withdrawn after action on the petition by the filing officer, but written demands for the withdrawal of names should be recognized before final action of the filing officer in determining the sufficiency of the petition.[119]

4. *Reapportionment for Election of Legislators.* Despite several recent decisions of the Supreme Court of the United States, state courts and lower federal courts are still called upon to interpret state laws relating to reapportionment.[120] One of the most important cases involved the Mississippi reapportionment act of 1932. This law was attacked on the ground that it violated the act of Congress of 1911 requiring that the districts "shall be composed of a contiguous and compact territory and contain as nearly as practicable an equal number of inhabitants." The inequality of inhabitants in the districts varied from 214,000 to 414,000.

A mandamus was sought to compel the secretary of state to ignore the act and to refuse to prepare the ballots. Though acts of the governor were involved, the mandamus was not applied to him, since, according to the law of many states, mandamus does not apply to the acts of the governor. As the purpose of the writ was to control the primaries of the Democratic party in August, and to make the primaries state-wide and not by districts, the court refused to grant the writ, on the ground that under the primary election laws courts have no jurisdiction to control party authorities in the administration of party machinery. It was pointed out that the equality principle was not taken seriously in other states with discrepancies ranging from 150,000 to 520,000 and 168,000 to 634,000.

[119] Coghlan v. Cuskelly, 244 N.W. 39 (June, 1932). Because constitutional provisions authorizing the supreme court to review the action of the secretary of state in passing upon the sufficiency of an initiative petition was considered mandatory and self-executing, such a petition proposing reductions in the salaries of state officers was held defective, due to failure to observe the constitutional requirement as to the enacting clause. Preckel v. Byrne, 243 N.W. 823 (N.D., July, 1932).

[120] Smiley v. Holm, 285 U.S. 355; Koening v. Flynn, 285 U.S. 375; and Carroll v. Becker, 285 U.S. 380 (1931). In these cases it was held that procedure as to reapportionment involves normal legislative action and is subject to all of the constitutional requirements relating to such action.

After noting similar variations in the district apportionments in a number of states, it was observed: "These facts show that the matter of equality of inhabitants has by long and general practice been regarded both by the states and by Congress as a subordinate or secondary question, and that the paramount and controlling consideration has been to create districts in which homogeneity in national interests and needs shall be preserved, rather than to be bound by a strict judicial rule of equality in number of inhabitants."

Justices Cook and Smith, dissenting, thought the inequalities in population of the districts indefensible, particularly since 41 per cent of the population was in two districts. The governor had pointed out defects in the bill and had refused to sign it. In his judgment, numerous cases supported the view that the courts might review the validity of apportionment acts.[121]

About two months before the general election, the federal district court sustaining the opinion of Justice Cook holding the act void, declared that any election held under the act would be void and granted an injunction, with District Judge Holmes dissenting on the ground that the case did not come within the usual scope of equitable remedies.[122]

On the same ground, a federal district court enjoined the secretary of state of Kentucky from certifying names for candidates for congressional nominations in districts created by a state law which did not conform to the requirement of equality in numbers. Answering objections of both state and federal judges, it was held that the right to vote is a valuable right, capable of being measured in money, and no other remedy being available for the plantiff, it is appropriate to issue an injunction.[123]

[121] Wood v. State, 142 So. 747 (July, 1932).

[122] Broom v. Wood, 1 F. Supp. 134 (Sept., 1932). The act of Congress of June 18, 1929, in providing for reapportionment under the Fifteenth Census omitted the requirements as to compactness, contiguity, and equality in population of new districts to be created. This means, according to Chief Justice Hughes, that these requirements of the act of 1911 expired by their own limitations. Congress, in his opinion, did not intend to reënact the provision relative to compactness, contiguity, and equality in population. Four justices were of the opinion that the validity of the pertinent section of the act of 1911 was not properly before the court. Wood v. Broom, 287 U.S. 1 (1932); cf. note, *Univ. of Penna. Law Rev.*, Vol. 81, p. 343 (Jan., 1932).

[123] Hume v. Mahan, 1 F. Supp. 142 (Sept., 1932); in Mahan v. Bruce, 55 S.W. (2d) 368 (Dec., 1932), the Kentucky court of appeals held this law valid, the Supreme Court of the United States in the meantime having reversed the decision of the district court. Mahan v. Hume, 287 U.S. 575 (1932), memorandum of opinion on the authority of Wood v. Broom, *supra*. See also Browne v. Saunders, S.E. 105 (Oct., 1932), holding a Virginia congressional reapportionment law void for the same reason. Cf., also, State v. Daman, 243 N.W. 481 (Wis., June, 1932), approving a state reapportionment act as not disclosing unnecessary inequality in the population of the districts.

In Missouri, it was held that the adoption of a constitutional amendment to the effect that the legislative authority of the state shall be vested in the senate and house of representatives, subject to the initiative and referendum, had withdrawn from the governor, secretary of state, and attorney-general power to redistrict the state for senators in case the general assembly failed to do so. A former decision was followed,[124] holding that the apportionment of the state for the election of senators was an exercise of legislative power.[125] Where the state legislature failed to carry out the mandatory duty of reapportioning the state, the supreme court gave an advisory opinion that in case of such failure a subsequent legislature is authorized to pass a reapportionment act.[126]

5. *Constitutional Limitations During the Depression.* Those who have been arguing in and out of Congress that constitutional limitations must not be permitted unduly to restrict the policies of the government in pursuing appropriate measures to meet a great emergency can get slight encouragement from the current decisions of state and federal tribunals. Possibly the justices of the Supreme Court of the United States may be influenced to a greater degree by "preponderant public opinion" in discovering what Stephen Leacock called the "latent and unsuspected" meanings of the federal Constitution.

State constitutional limitations seem rather rigid and immutable in the face of grave public emergencies, according to a number of decisions during the year. When appropriations in Kentucky exceeded revenues by more than thirteen millions of dollars and an act was passed providing for a bond issue of fourteen millions, without submission to the voters, to pay auditors' warrants drawn against legal appropriations, it was held void. According to the constitution, declared the court, if the legislature finds it necessary to meet "casual deficits" or "failures in revenue" in excess of $500,000, it must submit the question to the people and must provide an annual tax to meet the indebtedness. The budget commission wished to consider the warrants as "evidences of a floating debt," but the court could find no provision in the constitution authorizing a floating debt and did not agree that the constitution could be set aside to meet an emergency.[127]

Multnomah county, Oregon, sought to submit to the voters at the regular primary election the question of an increase in the tax levy above the constitutional limit of six per cent to secure funds for relief during 1932–33. In a suit to enjoin the county commissioners from taking such

[124] State v. Becker, 290 Mo. 560 (1921).

[125] State v. Becker, 49 S.W. (2d) 146 (April, 1932). In a dissenting opinion, three justices urged that the former decision should be overruled.

[126] *In re* Legislative Reapportionment, 246 N.W. 295 (S. Da., Jan., 1933).

[127] State Budget Commission v. Lebus, 51 S.W. (2d) 965 (June, 1932).

action, the court held that such a question could be submitted only at a general election, but even under such circumstances the action would be void as an attempt to evade constitutional debt limits. As a justifiable effort to meet the emergency conditions of unemployment, the dissenting justices maintained: "We have, then, a case where human interests are vitally involved, and where a subordinate branch of the government is endeavoring to meet its moral and legal obligation to administer to those in dire need. Funds are exhausted. In this crisis the defendant commissioners have seen fit to submit to the voters the question of a special tax levy, that innocent victims of this economic depression may not feel the pangs of hunger. Under such circumstances, no apology need be offered if this court, without doing violence to well-established principles, resolves reasonable doubt in favor of the right of the people to express their approval or disapproval of the proposed tax levy."[128]

To provide for an extreme emergency involving the necessity of closing many public schools, the legislature of Alabama attempted to authorize the superintendent of education, the commissioner of agriculture and industries, and the attorney-general to form a corporation to promote and expand the public school system, to issue bonds and borrow money in an amount not to exceed $15,000,000, and to provide for the payment of such indebtedness out of funds in the state treasury appropriated for school purposes and any special school taxes. This proposed act was condemned in an advisory opinion on the ground that it created a state debt in violation of constitutional restrictions.[129]

Attempts to meet the emergency conditions of distress and unemployment have met with approval by certain courts at times in the face of constitutional restrictions to the contrary. A special session of the Pennsylvania legislature called to provide relief for unemployment appropriated ten million dollars for this purpose, to be expended under the direction of the department of public welfare. Obstructions were put in the way of the enforcement of the act, on the ground that it provided, not for unemployment relief, but for poor relief. The court granted a mandamus to compel the carrying out of the act, noting that it granted relief to a small number of poor persons and that the appropriation exceeded available revenues. Three justices regarded the act as primarily one for poor relief, and hence not strictly within the subject designated by the governor for the call of the special session.[130]

The situation where teachers have been called upon to serve the public in the performance of their usual duties and obligations for indefinite periods without pay finds legal obstacles in the way of a satisfactory solu-

[128] Kneeland v. Multnomah Co., 10 P. (2d) 342 (April., 1932).
[129] *In re* Opinions of Justices, 143 So. 289 (Aug., 1932).
[130] Commonwealth v. Liveright, 161 A. 697 (April, 1932).

tion. To meet such a situation, the legislature of Illinois authorized the issuance of tax anticipation warrants. But the board of education of one of the districts of Cook county decided that when tax anticipation warrants of the district were outstanding, it would not pay the salaries of teachers unless there was money in the hands of the treasurer. An application for a mandamus to compel the payment of the last month's salary resulted in the holding that a teacher was entitled to the issuance of a tax anticipation warrant to be paid out of the first moneys collected from a tax levy. Orders for teachers' salaries must be issued monthly, whether or not there are any funds in the hands of the treasurer to pay them.[131] The supreme court of Alabama, however, held void in an advisory opinion a proposed law for the emergency relief of teachers providing for the issuance of special revenue certificates by the state auditor in lieu of warrants theretofore issued.[132]

The supreme court of Michigan had a difficult issue to determine when a mandamus was sought by a newspaper publisher to compel the auditor-general to furnish for publication the descriptions of real estate delinquent for taxes to be sold in Ingham county. The paper had been designated as one to publish the notices of tax rates for 1933, but no list was furnished. Among the contentions, the first, that the remedy sought involved a suit against the state, was readily rejected. The claim that a contractual obligation had been impaired in refusing to furnish the list was also deemed unsubstantial. But the legislative approval of the action of the auditor-general in prohibiting the publication of the lands delinquent for taxes for 1930 and prior years raised a significant constitutional question. Did such a statute impair the obligation of contract clauses of federal and state constitutions? A previous law of 1931 had authorized any governmental unit to borrow money in anticipation of the collection of delinquent taxes for any preceeding year, and the proceeds from such delinquent taxes were to be placed in a sinking fund to pay the principal and interest on such loans.

Because this law entered into and formed a part of the contract of the holders of notes issued in pursuance of the statute, the obligation of contract was impaired by the subsequent law, and hence it was void. The effect of the law was also, thought the majority of the court, to prohibit the publication of delinquent tax lists, but at the same time to permit the court to make a valid order of sale and foreclose the lien upon lands delinquent for taxes without notice by publication of the descriptions of the lands to be sold. Such a result was considered in violation of the due process clauses of state and federal constitutions.

[131] People v. Board of Education; 182 N.E. 383 (July, 1932).
[132] *In re* Opinions of Justices, 143 So. 808 (Oct., 1932).

With two judges dissenting on the ground that much of the majority opinion was on issues not properly before the court, it was held that the writ of mandamus should issue, but on a subsequent order the writ was denied, "in view of the existing emergency and it being a discretionary writ" says the reporter's note.[133]

"The extraordinary number of people in need is a matter of common knowledge that we may take judicial notice of," said the supreme court of California, in approving a bond issue of the city and county of San Francisco for the care and maintenance of persons made indigent as a result of the economic depression. Questions of statutory construction were involved mainly, but the constitutional inhibition against the giving of public money or other things of value to any individual, association, or corporation was considered inapplicable under the circumstances, since the expenditure of public money in pursuance of a public purpose is not within the scope of this prohibition.[134] But a Florida act making appropriation for the relief of a particular person on certificates from circuit judges was held void as a local or special law.[135]

An unusual response to emergency conditions came from the supreme court of Washington. With fifty thousand in a county needing public aid, the court declared that it would not disturb the county commissioners' action in appropriating for poor relief $200,000 beyond the statutory debt limit of the county.[136] Constitutional restrictions might not have been slurred over so readily. And the relief laws of Maryland providing for the partial support of mothers whose husbands were dead, when such mothers have children under fourteen years of age, were held valid as against contentions that they violated the constitutional requirement respecting titles, the home rule amendment, and the provisions prohibiting the establishment of a general pension system. The provisions prohibiting the establishment of a pension system were held to apply only to military pensions.[137] When a state imposed on distributors of butter substitutes an excise tax of 15 cents per pound, the act was held not so palpably arbitrary as to be invalid. In arriving at this judgment, it was observed that the court may judicially notice the distressing condition of agricultural interests and must recognize the expansive power of the constitution to meet the needs of society.[138]

[133] Thompson v. Stack, 247 N.W. 360 (March, 1933).

[134] City and County of San Francisco v. Collins, 13 P. (2d) 912 (Aug., 1932). See also Patrick v. Riley, 287 P. 455 (1930), supporting paying of public funds to individuals.

[135] State v. Coarsey, 141 So. 740 (May, 1932).

[136] Rummens v. Evans, 13 P. (2d) 26 (June, 1932).

[137] Mayor and City Council of Baltimore v. Fuget, 165 A. 618 (Mar., 1933).

[138] Magnano Co. v. Dunbar .2 F. Supp. 417 (Wash. Nov.. 1932)

Some years ago, Chief Justice Winslow of the Wisconsin supreme court pointed out that an eighteenth-century written constitution cannot advantageously be applied to a twentieth-century society. With most of the state constitutions adopted a half century or more ago, this observation is particularly pertinent today when every department of government is called upon to cope with circumstances and conditions so new and unprecedented that satisfactory expedients could not have been anticipated and provided for, even if constitutions had been framed within the past generation. Either present constitutional limits and restrictions must be subjected to easy amendment or the old terms and formulas must be given markedly different connotations. The former alternative involves a transformation in political thought which can perhaps be accomplished only slowly and with frequent discouragements and set-backs. The latter alternative—the method of construing the phrases of written constitutions to suit the extraordinary requirements of modern times—is more readily applicable, but involves the disadvantage of making American constitutional interpretation even more than at present a "mystic art."

Campaign Funds in a Depression Year.[1] The presidential campaigns of 1928 and 1932 are a study in contrasts. In 1928, the United States was at the peak of the boom period; the incumbent Republicans were confident of victory; and the result was a Republican victory which "broke" the Solid South and swept all but two states outside that section into the Republican column. The 1932 campaign was fought in the midst of depression and disaster; confidence was with the Democrats for the first time in many years; and the result was a Democratic victory which put the party securely in control of both houses of Congress, as well as of the presidency. What effect did the changed economic and political outlook have upon the financing of the campaign?

Early in 1932, it was announced that economy would be the watchword in both political camps, and the campaign passed with few charges of "slush funds" or corrupt financing.[2] For the first time since 1912, the financial activities of the national committees were subjected to no searching investigation by a congressional committee.

The two parties were in a very different financial situation at the outset of the campaign. The Republican National Committee ended the 1928 campaign solvent as well as triumphant. On the other hand, Mr. Raskob's unsuccessful attempt to put Alfred E. Smith in the White House left his party $1,600,000 in debt. Some $100,000 of this was owed to Mr. Raskob himself, the remainder being held by a number of New York City banks.[3] Between 1928 and 1932, strenuous efforts were made to pay off this indebtedness and put the party on a sound financial footing for the campaign of 1932. A difficult task under the best of circumstances, it was an impossible one for a defeated party in a period of depression, especially since the effective publicity campaign carried on under the direction of Jouett Shouse and Charles Michelson was taking money out of the treasury almost as fast as it came in. Without the regular loans which Mr. Raskob made during this period, this activity would have been impossible. Between January 1, 1929, and January 1, 1932, the committee borrowed

[1] This study was made possible by a grant-in-aid from the Social Science Research Council, which the writer gladly acknowledges. Material was taken from the reports of the treasurers of the national committees filed in the office of the Clerk of the House, Washington.

[2] There were the usual charges that Republican postmasters were subjected to pressure in the collection of funds (*New York Times*, May 15, 1932); and late in the campaign Republicans attempted to make political capital of alleged Democratic appeals to business interests in Canada as well as the United States (*ibid.*, October 28, 31, and November 1, 1932).

[3] Bankers Trust Company, $800,000; Brooklyn Trust Company, $300,000; International Germanic Trust Company, $200,000; County Trust Company, $200,000.

$370,000 from its chairman, only $24,750 of which was repaid during that period. By August 31, 1932, when the campaign entered its active stages, the indebtedness was still $520,250.[4]

The expenditures of the campaign are summarized in Table I. It is evident at a glance that the financial outlay of the two parties was very evenly balanced, whether we include all the money passing through the hands of the national committees, or only the direct expenditures of these

TABLE I. EXPENDITURES OF NATIONAL COMMITTEES, JANUARY 1 TO DECEMBER 31, 1932

	Democrats	*Republicans*
Expended during campaign	$1,706,839[a]	$2,765,080
Bills unpaid	539,136	134,972
Total	$2,245,975	$2,900,052
Sent to states	241,203	753,097[c]
Sent to congressional and senatorial committees	11,500	105,342
Expended by National Committee	$1,993,272[b]	$2,041,613
Total	$2,245,975	$2,900,052

[a] Payments on loans totaling $503,766.61 are not included. The figures represent as accurately as possible the current running expenses of the campaign itself.

[b] Some $57,000 of this was distributed to auxiliary organizations such as the National Progressive League for Roosevelt, but these expenditures were accounted for in reports filed with those of the National Committee.

[c] By an agreement with the state committees, the treasurer of the national committee acted as agent of the state committees in the collection of funds. The sum of $573,496.71 was returned to the states under this agreement. In addition, $179,600 of its own funds were sent to the states by the National Committee.

agencies. Not since the victorious Democratic campaigns of 1912 and 1916 have the two parties been so evenly matched.[5] The slight financial advantage, however, lay with the defeated Republicans and not the successful Democrats, and the campaign is an exception to the rule that expenditures are a reliable index of the outcome of the election.[6]

One of the most interesting points to be gleaned from these figures is

[4] A Democratic Victory Campaign Committee of the Democratic National Committee was created on January 1, 1932. This operated until August 31, 1932, when the Democratic National Campaign Committee was organized as the agency of the Democratic National Committee for the 1932 campaign. The reports of Frank C. Walker, treasurer of the National Committee, cover both organizations.

[5] For expenditures of national committees in earlier campaigns, see my *Money in Elections*, p. 73.

[6] See George A. Lundberg, "Campaign Expenditures and Election Results," *Social Forces* Vol. 6 (1928), p. 455.

the startling drop in totals since 1928. Compared with the $3,000,000 expended directly by the Democratic National Committee, and the $4,000,000 spent by their successful opponents, the figures are modest indeed. Depressions have their effect upon party expenditures as well as upon those of individuals and governmental units. However, Democratic expenditures were higher than in any other national campaign for which we have record except those of 1916 and 1928, and the Republicans spent less in 1912 and 1916. Measured in terms of the cost per vote cast, the combined expenditure of the two national committees in 1932 was lower than in any recent campaign, being slightly less than thirteen cents.[7]

In 1932, as in 1928, one of the largest single items of expenditure was for radio broadcasting. During the campaign itself, the Republican National Committee paid more than $437,000 to radio companies. In addition, bills outstanding to the amount of $114,972 on December 31, 1932, were labelled "for radio and other expenses."[8] The percentage which these amounts represent of the total outlay of the National Committee is startling, and is particularly significant when compared with the radio expenditures of 1928. In 1928, radio broadcasting cost $420,000, representing ten per cent of the total expenditures. The 1932 figures will exceed this by a wide margin, and the $437,000 already actually accounted for represents more than twenty per cent of the total. The Democrats spent less than their rivals for this purpose, and much less than the $550,000 expended in 1928. In 1932, their total outlay was $343,415, between seventeen and eighteen per cent of all funds spent directly by the National Committee, and about the same proportion as in 1928. Broadcasting companies should greet presidential elections with enthusiasm, for apparently we have reached the point where close to twenty per cent of the expenditures of the national committee will go to spread the political gospel in every radio home.

The Democratic records show a curious situation so far as radio expenditures are concerned. During the campaign itself, only $182,451 was spent for this purpose; but the list of "unpaid obligations" filed at the end of the year showed $160,964 outstanding in radio bills, more than $100,000 of which was owed to the National Broadcasting Company. Almost all of these debts remained unpaid on May 31, 1933. Such a situation is certainly unhealthy and gives rise to the suspicion that there may have been some kind of understanding between the Democratic National Committee and the radio companies.

[7] The total vote cast was 39,816,522, and the combined recorded expenditures of the two parties amounted to $5,146,027. The lowest cost per vote in any previous campaign was $.15 in 1924. In other campaigns since 1912, the cost has varied from $.19 to $.20. See *Money in Elections*, p. 80.

[8] In the report of March 1, 1933, this item had grown to $132,775. There was little change in it between March 1 and June 1, 1933.

One need not be crassly cynical to suspect that the modest expenditures of 1932 were the result of necessity rather than choice. Throughout the campaign, party managers bitterly lamented the difficulty of obtaining funds, and the receipts listed in Table II show a marked decrease in the volume of contributions. This is particularly true in the case of the Republican party, the $2,500,000 raised in 1932 being less than forty per cent of the $6,600,000 which rolled into the campaign chest in 1928. The confident Democrats contributed slightly more than $2,000,000, which is less than their rivals raised, but compares more favorably with the $3-

TABLE II. RECEIPTS OF NATIONAL COMMITTEES JANUARY 1 TO DECEMBER 31, 1932.[9]

	Democrats	*Republicans*
Contributions	$2,139,817	$2,527,249
Loans unpaid	130,000	86,000
Miscellaneous	108,871	36,305
Total	$2,378,688	$2,649,554

934,960 available in 1928.[10] Judged by earlier campaigns, however, the way of the campaign fund collector in 1932 was not such a hard one. Democratic contributions were greatly in excess of those of every other campaign for which we have records.[11] In the case of the Republicans, the 1932 contributions were larger than in 1912 and 1916, but fell far below those of the triumphant campaigns of 1920 and 1924. For the first time since 1912, although the Republicans had a financial advantage, the resources at the disposal of the party organizations were fairly evenly matched.

The effect of the depression is sharply reflected in the reduced number of contributors to this campaign. Only 26,581 Democrats gave to the national committee—less than one-third the number of contributors in 1928. Republican contributors dropped from over 143,000 in 1928 to

[9] Loans repaid during the course of the campaign are not included in this table. All other collections of the national committees, whether for themselves or as agents of other independent party committees are included. Collections made and turned over to the Republican National Committee are included, as are the collections of the Finance Division for Illinois and the Chicago Citizens Committee, which were turned over to the Democratic National Committee. Under Democratic "contributions" are included $100,000 from John J. Raskob, contributed by canceling notes of the National Committee to that amount; and $5,000 from B. M. Baruch and $1,000 from R. H. Gore, contributed by these gentlemen to help cancel the committee's indebtedness to Mr. Raskob, not listed as "contributions" in the reports of the committee. The "miscellaneous" item under "Democrats" is unusually large because it includes more than $75,000 from the sale of medallions.

[10] It must be remembered that in 1932 $1,600,000 of the $5,721,381 receipts of the Democratic National Committee took the form of loans.

[11] See *Money in Elections*, p. 130.

39,950 in 1932. This is the more significant in view of the unbroken increase in the number of Republican contributors from 1912 to 1928.[12]

More significant than the number of contributors itself is the part played by contributions of various sizes in the financing of a campaign. In Table III, contributions have been divided into five groups and the amount and the percentage given by each of these groups are shown. It

TABLE III. DISTRIBUTION BY SIZE OF CONTRIBUTIONS TO NATIONAL COMMITTEES JANUARY 1 TO DECEMBER 31, 1932[13]

	Democrats			*Republicans*		
Size of contribution	Number of contributors	Amount contributed by group	Per cent contributed by group	Number of contributors	Amount contributed by group	Per cent contributed by group
$50,000 and over	1	$ 125,000	5.9	1	$ 50,000	2.0
25,000 to 49,999	5	175,000	8.2	5	148,704	5.9
5,000 to 24,999	72	635,028	29.6	110	813,733	32.2
1,000 to 4,999	202	307,968	14.4	411	626,505	24.8
100 to 999	1,723	310,459	14.5	2,918	592,287	23.4
Less than $100	24,578	342,506	16.0	36,505	230,309	9.1
Impossible to allocate	—	243,856	11.4	—	65,711	2.6
Total	26,581	$2,139,817	100.0	39,950	$2,527,249	100.0

is evident that the Democrats depended to a greater extent upon very large and very small contributions, while the Republicans drew most heavily upon the middle brackets. In fact, eighty per cent of the Republi-

[12] Figures are as follows: 1912, 2,600; 1916, 34,205; 1920, 50,777; 1924, 90,227; 1928, 143,749.

[13] Some explanation of method is called for in connection with this table. A card catalogue was made of contributors of $1,000 or more, in order to trace numerous cases where one individual gave contributions at different dates. Such cases were listed as one contribution. In other groups, the number and amount were totaled, but no attempt was made to trace cases where one person contributed at various dates. Collections made by clubs or committees, without record of the names of the individuals contributing, are listed as "impossible to allocate." In the case of the Democrats, this is large because it includes $156,250 from the Chicago Citizens Committee, accepted in full settlement of the $200,000 convention pledge.

The law requires the filing of names of each contributor of $100 or more, and the total amount contributed in smaller sums, but the Republicans have filed a complete list of all contributors regardless of size. The total number of Democratic contributors was obtained from Mr. Ambrose O'Connell, assistant treasurer. The number of contributors of less than $100 was secured by subtracting the number of contributors in the upper brackets from this total.

can fund came from those who gave amounts ranging from $100 to $25,000. Six persons gave 14.1 per cent of the Democratic fund—almost the same proportion contributed by the 24,500 persons giving in amounts less than $100.

In view of the depression, a comparison of the part played by contributors of various sizes in 1932 with other years is particularly interesting. Did the parties draw more heavily upon large contributors, or was the effect of the depression to increase the relative importance of the small giver? Those who place their faith in more democratic financing of political campaigns will be cheered to learn that for the first time since 1912 the relative importance of the small contributor increased appreciably.[14] In the Democratic party, the contributions of less than $100 rose from 12.5 per cent in 1928 to 16.0 per cent in 1932, and in the Republican party from 8.2 per cent in 1928 to 9.1 per cent in 1932. No records were established, however, for in both cases the percentages are lower than in any campaign except that of 1928. At the other extreme, the rôle of the contributor of $5,000 or more decreased in importance in both parties, dropping from 52.7 per cent to 43.7 per cent in the case of the Democrats, and from 45.8 per cent to 40.1 per cent in the case of the Republicans. Contributions of $100 to $5,000 were less important in the Democratic party in 1932 than in 1928 and more important in the Republican party. The tendency of the depression to increase the relative importance of the small contributor is the really significant point brought out by this comparison.

The geographical distribution of contributors of $1,000 or more, presented in Table IV, brings out some striking differences in the financial support of the two major parties, and some interesting contrasts between 1928 and 1932. Both parties drew most heavily upon the states of the Northeast, the Democrats slightly more so than the Republicans, and more heavily than the income tax payments from this section would lead one to expect.[15] The Democratic figures become more significant when compared with the geographical distribution for 1928. In that campaign, the Democrats drew over eighty per cent of their campaign fund from this section, 74.1 per cent of it from New York State alone;[16] in 1932, 69.1 per cent of the Democratic contributions of $1,000 or more came from this section, and New York contributed only 60.7 per cent. The two New Eng-

[14] In 1920, the per cent of the Republican fund coming from this source rose from 15.1 to 15.3. With this exception, however, the rôle of the small giver has steadily declined in both parties since 1912.

[15] This disparity is accounted for in part by the fact that some contributors who give business addresses in New York City pay income taxes from homes in other states.

[16] See *Money in Elections*, p. 164, for table.

TABLE IV. GEOGRAPHIC DISTRIBUTION OF INDIVIDUAL INCOME TAX PAYMENTS AND CONTRIBUTIONS OF $1,000 OR MORE TO NATIONAL COMMITTEES, 1932[17]

Section	Per Cent Income Tax	Per Cent Democratic Contributions	Per Cent Republican Contributions	Per Cent Total Contributions
Northeast[a]	59.3	69.1	67.1	68.0
Center[b]	21.2	10.3	21.3	16.6
South[c]	10.2	15.9	4.4	9.3
West[d]	8.2	2.5	2.8	2.6
Other[e]	1.1	2.2	4.4	3.5
Total	100.0	100.0	100.0	100.0

[a] Conn., Del., Me., Mass., N.J., N.Y., N.H., Pa., R.I., Vt.

[b] Ill., Ind., Ia., Mich., Minn., Ohio, Wis.

[c] Ala., Ark., Fla., Ga., Ky., La., Md., Miss., Mo., N.C., Okla., S.C., Tenn., Tex., Va.. W.Va.

[d] Ariz., Cal., Colo., Idaho, Kan., Mont., Neb., Nev., N.M., N.D., Ore., S.D., Utah, Wash., Wyo.

[e] Alaska, Dist. of Columbia, Hawaii, Philippines, Porto Rico, and a few giving foreign addresses.

land states of Maine and New Hampshire may claim the distinction of having made no contributions of $1,000 or more to either party in 1932.

Although the Central states gave more heavily to the Republicans than to the rival party in 1932, the proportion of the Democratic fund coming from this section greatly exceeded the insignificant 2.8 per cent of 1928. The Republicans drew most heavily upon Ohio and Illinois; the Democrats upon Illinois. Indeed, Illinois contributed almost equally heavily to the two parties. As a group, the Central states contributed a smaller proportion of the campaign funds than one might expect from the income tax returns.

The financial rôle of the South was, of course, more important in the Democratic than the Republican party; nor is it surprising to find that the South contributed more heavily to the Roosevelt campaign than to that of Smith four years earlier. In view of the southern support of Hoover in 1928, however, it is surprising that this section contributed more heavily to the Republican party in 1932 than in the preceding campaign. The probable explanation is that the money raised in the South in 1928 went to various anti-Smith organizations rather than to the Republican National Committee itself. In 1932, Texas gave more heavily to the Democratic committee than any other southern state. Its contribu-

[17] Income percentages are taken from United States Secretary of the Treasury, *Statistics of Income for 1930*, p. 68. This is the last year for which these figures were available at the time this note was written.

tions represented almost eight per cent of the total, and to Vice-President Garner's state goes the honor of having contributed more to the campaign fund than any other state except New York.[18] Surprisingly enough, the contributions of $1,000 or more from Georgia, President Roosevelt's "other state," totaled only a little over $3,000.

Western states contributed about equally heavily to both parties, but very little to either. Neither party received a single contribution of $1,000 or more from Idaho, Montana, Nevada, New Mexico, North Dakota, South Dakota, Utah, or Washington, and the proportion of the funds contributed by this section is far below the proportion of income tax payments. Apparently the enthusiasm of the West for Hoover had cooled since 1928, for the proportion of $1,000 contributions which the Republicans drew from this section dropped from ten to 2.8 per cent of the total.

In an effort to probe into the financial backing of the two parties, an attempt was made to classify contributors of $1,000 or more by economic interests. Such a task in a complex economic order is fraught with many hazards: if the same individual is at one and the same time president of a

TABLE V. DISTRIBUTION BY ECONOMIC INTERESTS OF CONTRIBUTORS OF $1,000 OR MORE TO NATIONAL COMMITTEES, 1932[19]

Economic Interests	*Democrats*		*Republicans*	
	Amount	Per Cent	Amount	Per Cent
Bankers and brokers	$ 301,100	24.2	$ 335,605	20.5
Manufacturers	130,950	10.5	431,647	26.3
Mining and oil	54,000	4.4	158,500	9.7
Railroads, airways, and public utilities	76,500	6.1	67,500	4.1
Professional people	152,043	12.2	121,800	7.4
Publishers, advertising	88,500	7.1	22,000	1.4
Retail stores	30,200	2.4	36,000	2.2
Unclassified	125,300	10.2	142,840	8.7
Unidentified	284,403	22.9	323,050	19.7
Total	$1,242,996	100.0	$1,638,942	100.0

[18] A writer in the *New York Times*, May 28, 1933, in discussing the unsatisfied thirst of Texas for patronage, says that this state "raised more money for it [the Roosevelt-Garner ticket] than any other state." This is, of course, not true, but Texas' financial support was conspicuous.

[19] Information concerning economic interests was taken from *Who's Who for 1932–33*, and from directories and "Who's Who" publications for various cities. Under "unclassified" are included real estate people, contractors, office-holders, movie and vaudeville operators.

bank, director of a public utility corporation, and heavily interested in steel manufacturing, is he to be classed as a banker, a public utility magnate, or a manufacturer? In so far as possible, the attempt was made to ascertain the individual's major economic interest and classify him accordingly, but in the absence of exact yardsticks and complete information such classifications must be somewhat subjective. With this word of caution, the results of this classification are presented in Table V.

Unquestionably both parties drew heavily upon banking interests, the Democrats receiving 24.2 per cent of their large contributions from this source, and the Republicans 20.5 per cent. Probably too much importance should not be attached to the fact that the Democrats drew more heavily from this source than the Republicans. In the first place, almost one-third of the amount which the former party received from this source was from John J. Raskob in the form of cancelled notes to the amount of $100,000. For this reason it may be argued that this represents a "debt of honor" which Mr. Raskob owed to the 1928 campaign rather than a contribution to the 1932 campaign.[20] If, however, this contribution is omitted from both the banking group and the total, the amount coming from this source would still be more than seventeen per cent of the total. It is apparent that President Roosevelt's promises of a "new deal" did not entirely dry up contributions from this source, although the fear was voiced that this would happen.[21] A closer examination of the names of contributors reveals that there was a difference in the make-up of the groups in the two parties which cannot be brought out statistically. The Republican list includes the names of most of the powerful New York banking and investment houses: Chase National, Bankers' Trust, Guaranty Trust, Irving Trust, First National, Corn Exchange, Kuhn Loeb, J. P. Morgan, Hayden Stone, Dillon Read, and J. S. Bache are all represented. Except for large contributions from the Mellon Pittsburgh interests and the Union Trust Company of Cleveland (of which J. R. Nutt, treasurer of the Republican National Committee, is president), practically all of these contributions came from New York City. In the case of the Democrats, a much larger proportion came from middle western cities and the South —particularly Texas. To a certain extent, then, these contributions indicate a division between the bankers of the Northeast and those of the West and South.

Manufacturers were important in both parties, but contributed much more heavily to the Republicans, possibly in support of the Hawley-Smoot tariff. The Republican list includes the makers of Chrysler, Ford, Hud-

[20] It might be argued, also, that Mr. Raskob was a manufacturer rather than a banker, but banking has been his major interest since his withdrawal from active direction of General Motors in 1928. He calls himself a "capitalist" in *Who's Who*.

[21] See *New York Times*, August 22 and 26, 1932.

son, and General Motors cars, Briggs auto bodies, Goodrich and Firestone tires; United States steel, Bethlehem steel, Jones and Laughlin steel, and Baldwin locomotives; besides such products as Wrigley gum, Coca-Cola, Ivory soap, Gotham hosiery, Heinz pickles, Forhan's toothpaste, and Victor talking machines. The only important manufacturing concerns included in the Democratic list are the American Car and Foundry Company, the American Locomotive Company, the Crane Plumbing Company, the International Harvester Company, the R. J. Reynolds Tobacco Company, and the Bendix Aviation Corporation—not a very imposing list. Clearly, Hoover was the choice of the manufacturers in 1932.

Banking and manufacturing were the only interests which furnished more than ten per cent of the large Republican contributions. In the Democratic party, 12.2 per cent of the contributions of $1,000 or more came from professional people, most of them lawyers. Many of these lawyers, of course, are identified with large corporate interests.

Of the economic interests playing a less important part in the financing of the campaign, publishers contributed more heavily to the Democrats than to the Republicans; mining and oil interests, railroads and public utilities more heavily to the Republicans. The *Louisville Courier-Journal*, the *Baltimore Sun*, the *Fort Worth Star-Telegram*, and the *Omaha World-Telegram*, as well as the Hearst papers, are represented in the financing of the Democratic campaign. Quite the most surprising Democratic contributions from this source were those from Joseph Medill Patterson and his sister Eleanor Patterson, both of whom are identified with the *Chicago Tribune*, one of the strongest Republican organs of the Middle West.

The list of individual contributors to the two national party organizations reveals many old friends and some interesting new ones. The largest gifts to the Democratic party were as follows: John J. Raskob, banker and automobile manufacturer, $125,000;[22] William H. Woodin, American Car and Foundry Company, $45,000; Bernard Baruch, financier and director of the Baltimore and Ohio Railroad, $45,000; Vincent Astor, director of the Chase National Bank, Western Union Telegraph Company, and other corporations, $35,000; William Randolph Hearst, newspaper publisher, $25,000; R. W. Morrison, San Antonio, Texas, $25,000; M. L. Benedum, Pittsburgh oil and gas operator, $22,500; R. A. Josey, Houston, Texas, $20,000; Pierre S. DuPont, explosives and General Motors, $14,500; James M. Curley, mayor of Boston, $10,000; Robert J. Dunham, Universal Oil Products Company, Chicago, $10,000; Mrs. William Randolph Hearst, $10,000. Raskob, Woodin, Baruch, Astor, and DuPont each contributed $10,000 or more to the Smith fund in 1928, and Curley gave

[22] Mr. Raskob made an outright contribution of $25,000 on October 21, 1932, and on May 26, 1932, cancelled $100,000 of the debt owed him by the National Committee.

$1,000, but one looks in vain for the names of Hearst, Morrison, Benedum, Josey, and Dunham in the list of large contributors to that campaign. William Randolph Hearst and James M. Curley are traditionally Democratic in politics and were early and ardent in their support of the Roosevelt candidacy. The generous contributions of the two gentlemen from Texas may have been motivated partly by relief at the defeat of the Smith candidacy and partly by enthusiasm for Garner. Robert J. Dunham made no political contributions in 1928, although he called himself a Republican. The interesting case of Mr. Benedum will be considered later.

The list of large contributors to the Republican party reads like a sheet from the Social Register. The largest individual contributor was Eldridge R. Johnson, of Victor Talking Machine fame, who gave $50,000. Various contributions of members of the Mellon family, however, totaled $53,500.[23] Next in order of size comes the $36,500 contributed by the Pratts; the $35,000 contributions of the Rockefellers and Edward Hutton, respectively; $32,000 from the Guggenheim family, whose interests are in copper and aviation; $30,704 from Ogden L. Mills, Secretary of the Treasury in the latter part of the Hoover administration; and $30,000 from the Firestones, manufacturers of automobile tires.[24] William Nelson Cromwell, the corporation lawyer who has been a consistent contributor to the Republican party since 1904, gave $28,000 in 1932. The contributions of various members of the Milbank family, who are identified with the Chase National Bank, totaled $25,500, and Mr. and Mrs. Herbert Straus, of the R. H. Macy Company, gave $22,000.

The members of certain banks and corporations made notably large contributions in a number of cases. Conspicuous are the contributions to the Republican National Committee from persons interested in the Standard Oil Company ($71,500); the Chase National Bank ($61,500); Kuhn Loeb and Company ($28,500); and J. P. Morgan and Company ($13,500). In the case of the Democratic party, representatives of the American Car and Foundry Company gave $55,000, and two representatives of the American Locomotive Company contributed $12,500.

The turnover in large contributors between 1928 and 1932 was startling in the Democratic party. Only twenty-six per cent of those who gave

[23] A. W. Mellon, former Secretary of the Treasury and ambassador to Great Britain, contributed $25,000; R. B. Mellon, his brother $15,000; A. W. and R. B. Mellon, $5,000; and William L. Mellon, a nephew, $8,500.

[24] The Pratt contributions were as follows: George D., $8,500; Ruth B., $10,000; Harold I., $8,500; Herbert L., $8,500; Mrs. Herbert L., $1,000. John D. Rockefeller, Sr., contributed $15,000; John D., Jr., $15,000; Percy Rockefeller, $5,000. The Guggenheim contributions were made by Mrs. Daniel, Harry F., Mrs. Harry F., Murray, Simon, and S. R.

$1,000 or more to the Smith campaign contributed in 1932. Probably the explanation lies in the change in leadership from Smith to Roosevelt. The fact that the names of many Wilson supporters do not appear among the contributors in 1928 but reappear in 1932 points in the same direction.[25] Of the twenty-five people who gave $25,000 or more to the Democratic National Committee in 1928, only eleven appear among the contributors of $1,000 or more in 1932, and the effect of the depression is evident in the reduction in size of many other contributions. Arthur Curtiss James reduced his contribution to $2,500, Francis P. Garvan to $10,000, Nicholas M. Schenck to $5,000.

The turnover in Republican contributors was not so large, but less than half the persons contributing $1,000 or more in 1928 gave in 1932. Whether this was the effect of the depression, lack of enthusiasm for the nominee, or a combination of these forces is impossible to say. Twenty-five of the forty-three individuals who gave $25,000 or more in 1928 are found in the list of contributors of $1,000 or more in 1932. Many, however, made drastic cuts in the size of their contributions. The Fisher brothers, whose contributions totaled $100,000 in 1928, gave only $5,000 in 1932. The contributions of W. O. Briggs, Clarence Dillon, and D. M. Goodrich were cut to $5,000. The names of Otto Kahn, S. S. Kresge, and Eugene Meyer, each of whom gave $25,000 in 1928, are conspicuous by their absence.

In a few interesting cases contributors gave more in 1932 than in 1928. The outstanding instances are the contributions of Bernard Baruch and William H. Woodin to the Roosevelt fund, and of Andrew W. Mellon and Ogden L. Mills to the Republican National Committee.[26]

In view of the enormous shift in the popular support of the parties between 1928 and 1932, one might expect to find numerous shifts in financial support. These cases are relatively few, however. The only persons who contributed to the Republican party in 1928 and to Roosevelt's support in 1932 were Harry H. Blum, A. J. Drexel Biddle, Jr., Thomas Howell, Ira Nelson Morris, and Arthur Sachs. James Speyer was the only person who transferred his financial allegiance from the Democratic to the Republican party.

In at least three cases in 1932, the same person contributed to both parties. George F. Driscoll of Brooklyn gave $2,000 to the Republicans on November 5, but on November 10, two days after the election, con-

[25] Charles R. Crane, Homer Cummings, Vance McCormick, Ira Nelson Morris, and Joseph Tumulty are interesting instances.

[26] Baruch gave $37,590 in 1928 and $45,000 in 1932; Woodin increased his contribution from $25,000 to $45,000. The 1928 contribution of A. W. Mellon was $25,000 and in 1932 he gave $25,000 in his own name and joined with his brother R. B. in a $5,000 gift. Ogden L. Mills gave $12,500 in 1928 and over $30,000 in 1932.

tributed an equal amount to the Democratic party. Early in the campaign, Arthur G. Leonard, president of the Union Stock Yards, Chicago, made a $3,000 contribution to the Republican party (to which he had given financial support in 1928), but on October 29 he contributed $7,500 to the Democrats. Frank Phillips, an Oklahoma oil man, made a contribution of $1,000 to each party in October.

Husbands and wives, brothers, and business associates frequently divide their financial support. Conspicuous in 1932 were the cases of the Thomas L. Chadbourne, Edward S. Harkness, and Charles E. F. McCann families, in which the husbands made substantial contributions to the Democratic party while their wives were giving to the opposition forces.[27] Members of the DuPont, Guggenheim, Vanderbilt, and Straus families divided their financial support in 1932, and representatives of the Chase National Bank, J. P. Morgan and Company, and Standard Oil Company contributed to both parties, although more heavily to the Republican than the Democratic.

One of the most interesting cases of divided financial support is that of the Benedum-Trees Company of Pittsburgh, oil and gas operators, with interests in the Transcontinental Oil Company and the Cities Service Company. In 1928, both members of this firm supported Hoover. In 1932, however, M. L. Benedum became one of the largest contributors to the Roosevelt campaign fund with a gift of $22,500, and in addition aided the party by loans totaling $20,000. Quite the most interesting chapter in this story concerns the vagaries of J. C. Trees, who made a modest $1,000 contribution to the Republican fund during the campaign but thought it discreet to contribute $5,000 toward the Democratic deficit.[28] Whether or not certain pending tax cases have any connection with these contributions is a question which only a clairvoyant can answer.

The suggestion that the appointments of the successful party follow the campaign contributions is made frequently. It is difficult to prove that the contribution is the only factor taken into consideration, and one may always point to numerous cases where persons who did not contribute are similarly honored. Nevertheless it is interesting to note the instances in which important posts have gone to campaign contributors. Of the members of the cabinet, Secretary of the Treasury Woodin, Attorney-General Cummings, Postmaster-General Farley, and Secretary of Commerce Roper made contributions of $1,000 or more. The only conspicuously large contribution was Secretary Woodin's $45,000. Other important posts in the executive departments have gone to the following: G. T. Helvering,

[27] The figures are as follows: Thomas L. Chadbourne, $6,000, Mrs. Thomas L. Chadbourne, $1,000; Edward S. Harkness, $6,000, Mrs. Edward L. Harkness, $12,000; Charles E. F. McCann, $3,000, Mrs. Charles E. F. McCann, $5,000.

[28] This contribution was made on February 14, 1933.

Commissioner of Internal Revenue, $3,500; W. A. Julian, Treasurer, $11,000; W. C. Bullitt, assistant in the Department of State, $1,000; R. H. Gore, governor of Porto Rico, $1,000; Henry Morgenthau, Jr., chairman of Farm Credit Organization, $1,000; William Phillips, Under-Secretary of State, $1,000. In addition, Bernard Baruch, one of the largest contributors to the campaign, is recognized as one of President Roosevelt's most trusted advisers.

The connection between diplomatic appointments and contributions has been cited frequently and is borne out in the following instances: Robert W. Bingham, Great Britain, $5,000; Jesse L. Straus, France, $10,000; D. H. Morris, Belgium, $5,000; Breckinridge Long, Italy, $5,000; L. A. Steinhardt, Sweden, $5,000; (Mrs.) Sumner Welles, Cuba, $2,500. In addition, James M. Curley was appointed our diplomatic representative to Poland, but declined the post. One would not be quite fair to the new administration if one did not cite one conspicuous case in which campaign contributions could not have controlled the choice. William E. Dodd, the new appointee to the difficult post of Berlin, certainly was not chosen because of his ability to finance the party's political battles.

This was the record as it stood at the end of June: whether or not Chairman Farley's rumored intention to displace Republicans with deserving Democrats would yield a more abundant harvest for "fat cats," only time could tell.

In 1932 there was none of the wholesale borrowing which has characterized some earlier campaigns, although both parties ended the campaign in debt.[29] On January 1, 1933, the treasurer of the Republican National Committee reported:

Unpaid loans	$ 96,000
Unpaid bills	124,972
Total	$220,972
Cash on hand	25,872
Net deficit	$195,100

Between January 1 and June 1, 1933, the net deficit increased to $208,044. The Republicans, therefore, face the task of party rehabilitation with a distinct financial handicap.

The end of the 1932 campaign found the Democrats triumphant but still heavily in debt. January 1, 1933, their financial status was as follows:

Unpaid loans	$300,250
Unpaid bills	539,136
Total	$839,386

[29] See Table II above for the unpaid loans contracted during the campaign.

Cash on hand	70,330
Net deficit	$769,056

Between January 1 and June 1, 1933, cash contributions of over $400,000 enabled the National Committee not only to carry on the activities of the headquarters office, but to reduce the net indebtedness to $484,591. More than half of the amount contributed came in gifts of $1,000 or more, and some interesting names are found among the givers. James A. Farley himself contributed $5,000; John N. Garner, $2,500; Mayor Hague of Jersey City, $2,090; and T.J. Prendergast of Kansas City, Missouri, $5,000. A large number of contributions came from state and local party committees. A number of contributions from St. Paul and Milwaukee, made in April, 1933, lead one to suspect that the beer bill may help to solve the financial problems of the Democratic party as well as those of the United States government.

In conclusion it may be well to summarize the relative position of the two major parties in 1932 and compare the campaigns of 1928 and 1932. The parties were adequately financed and very evenly matched financially in 1932, with the advantage favoring the loser rather than the winner. The Democrats drew more heavily upon very large and very small contributors, while the Republicans depended largely upon the middle brackets. Both parties had their strongest financial support in the Northeast and leaned heavily upon banking interests, but the Republican party seems to have been the choice of "Wall Street." Manufacturers contributed heavily to the support of the "G.O.P." The turnover in contributors was large in both parties, and startling in the case of the Democrats. Both parties ended the campaign in debt. Comparing 1932 with 1928, one sees the effect of the depression in the reduced expenditures, the decrease in the number of contributors, and the greater dependence of both parties upon the small contributor. The effect of the changed political outlook probably explains why the parties were more evenly matched financially, and the wider distribution of Democratic financial support foreshadowed to some extent the widely distributed popular vote of that party.

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LEGISLATIVE NOTES AND REVIEWS

Governors' Messages and the Legislative Output in 1933. The American scheme of government with its constitutionally independent executive and legislative branches presents a perpetually interesting problem in the study of the working relationships between the two branches. Although he may not be the legislative leader in theory, realistically we expect a president or a governor of a state to function in that rôle. At the present time, President Roosevelt is extending executive influence very far into the classically-defined legislative field and, although it is as yet much too early to determine whether this extension is permanent or temporary, the tendency appears at least to meet with widespread present approval. Exactly the same tendency is apparent to a very marked degree in the relationships between state governors and legislatures in 1933. In almost every state, legislatures met in regular or special sessions, and the messages addressed to these bodies by the governors present objective evidence of the belief on the part of the latter that a fundamental part of their duties is the presentation of a definite and comprehensive legislative program. A careful study of the action taken by legislatures on these executive recommendations reveals a marked tendency to carry them into effect, although in certain states this tendency is much less apparent than in others. Furthermore, this increased assumption by state executives of legislative leadership seems to meet with the same popular approval with which the similar tendency in the national field is being hailed. In retrospect, this era may prove to have marked a stage forward in the expression of democracy through elective executives rather than through legislatures.

Limitations of space prevent a presentation of the contents of the governors' messages and the action of the respective state legislatures upon their recommendations in all states where such material was available to the writer. Eleven states, constituting a fourth of those in which regular legislative sessions were held in 1933, were chosen, the sampling being based upon the completeness of the materials available; the size and geographical location of the state; the peculiar party relationships between the governor, the two houses of the legislature, and the party organizations; and the degree in which the governor succeeded in securing affirmative legislative action on the items of his program. It appears to the writer, after careful consideration of the situations in forty-odd states, that the above choice is fairly representative. No attempt is made to evaluate executive leadership of legislative bodies in statistical terms, since the general nature of the study does not indicate the use of this type of description.[1]

[1] The writer wishes to thank the persons who assisted in furnishing materials

Arizona. Governor B. B. Moeur, Democrat, addressed messages to one regular and two special sessions of the eleventh legislature in the first six months of his first term. His plea for economy (his budget recommendation called for a thirty-five per cent reduction of $4,500,000 in the biennium) met with success. He proposed sweeping departmental consolidations, elimination of the highway department, and the substitution in many cases of single executives for existing large commissions; but these proposals were not adopted. Revenue measures designed to distribute the tax burden more equitably between the mining and agricultural interests were found difficult of enactment. A comparatively minor tax on commercial trucks and buses was passed, but a general sales tax measure was promptly invalidated by the supreme court because its passage was not effected in accordance with constitutional requirements; an income tax measure was passed, without sufficient support to attach the emergency clause, and the referendum was subsequently invoked, thereby rendering it inoperative; and an intangible tax measure was vetoed by the governor. There was legislation measurably complying with his suggestions concerning banking, building and loan associations, and schools.

The governor's program outlined to the legislature in its first special session met with larger acceptance, chiefly because the state's financial condition gave him power in requesting revenue measures. The bulk of taxes formerly came from the general property tax, half of which was paid by the copper companies. The serious curtailment of income from this source demonstrated the necessity of other types of taxation in order to avoid throwing the entire burden upon agricultural and stock-raising interests. Sales, luxury, income, and intangible tax laws were passed, and practically all of the twenty items of the executive program received affirmative legislative action.

The second special session, lasting one day only, was called merely to complete machinery for an impeachment proceeding initiated during the first special session. This was not a part of the governor's program, but

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and to remind the reader that, unless direct quotation is made, they are in no case to be held responsible for expressions of opinion in this article: Arizona, Governor B. B. Moeur and Mulford Winsor, law and legislative reference librarian; Arkansas, Governor J. M. Futrell; Connecticut, Governor Wilbur L. Cross; Florida, Governor David Sholtz and W. T. Cash, state librarian; Illinois, DeWitt Billman, executive secretary of the Legislative Reference Bureau; Missouri, Professor Lloyd M. Short, University of Missouri; New York, William E. Hannan, legislative librarian, and Antoinette Wagner, both of the legislative reference section of the New York State Library; Oregon, Governor Julius L. Meier and Harriett C. Long, librarian of the Oregon State Library; Pennsylvania, Governor Gifford Pinchot and John H. Fertig, director of the Legislative Reference Bureau; Texas, Governor Miriam A. Ferguson and Doris H. Connerly, legislative reference librarian; Wisconsin, Governor Albert G. Schmedeman and Edwin E. Witte, chief of the Legislative Reference Library.

was the result of a legislative investigation authorized during the regular session.

Arkansas. Possibly no newly-elected governor faced a more serious situation than did Governor J. M. Futrell, Democrat, at the time of his inauguration in January. He summarized the financial condition by saying, in part: "The state is bankrupt—its credit is destroyed—it has the greatest per capita bonded indebtedness of any state in the Union. . . . The vanishing point of our revenue is almost in sight. The number who can yet pay taxes is comparatively small, and is diminishing at an alarming speed each year. . . . We are nearing a breakdown in government. . . ." The bulk of his message dealt with his proposals for meeting this crisis, and the subsequent adoption by the legislature of practically every recommendation has apparently gone very far toward relieving the situation.

Governor Futrell himself mentions the following acts as being of outstanding importance. Two constitutional amendments which he recommended (prohibiting issuance of additional state bonds without the approval of the electorate and requiring a majority vote of all members of each branch of the legislature to enact a law and in other ways limiting the financial powers of the legislature) were passed and will be submitted to referenda in 1934. "Several state offices were abolished. Several departments were abolished. Salaries were reduced. There was a total saving made over the last biennial appropriation of 51.80 per cent. A sinking fund was established out of revenues beginning with the succeeding biennial period, which will consist of 20 per cent of these funds. This should retire our indebtedness in three to four years. We are trying to refund our road bond indebtedness, so that the state will not in future default. . . . Our overhead expense of highway indebtedness has been cut 50 per cent. Maintenance has been reduced 59 per cent, with which great improvement has been made."

Governor Futrell wished to relieve improvement districts in order to avoid default of their bonds. He advocated cutting automobile license fees in half, insisting that gasoline tax on an increased number of cars would more than justify the change. He requested the legislature, although he made no specific suggestions, to reorganize administrative departments, and he advocated changes in educational and judicial policies. The educational system was entirely reorganized, and the method of financial administration of educational and penal institutions was improved.

An observer has remarked: "Using public opinion as his chief weapon, the governor has controlled the General Assembly to the point where a negative vote against anything bearing the administrative trade-mark has been rare. . . . In office sixty days, confined to his bed at least ten of them, hunting or fishing every Saturday when physically able to do so, Governor

Futrell has accomplished everything promised in his opening campaign speech. Had the General Assembly not been forced to bow to its constitutional limitation of sixty days, it is believed that the governor would have placed the state on a profit-yielding basis in another month."

Connecticut. Elected for a second term, Governor Wilbur L. Cross, Democrat, delivered his inaugural address early in January to a General Assembly made up of a lower house having a Republican majority and an upper house consisting of seventeen Republicans and eighteen Democrats. This particular partisan structure led to many difficulties in the ensuing five-month session, in the matter both of appointments and of legislation. A comparison of the governor's inaugural address with his farewell address makes possible an evaluation of the extent to which his recommendations prevailed. The latter address indicated plainly the governor's own attitude toward the record of the General Assembly.

He recommended five measures which had failed of enactment in the General Assembly two years ago: (1) a constitutional amendment requiring a two-thirds vote to overcome an executive veto; (2) reorganization of the judicial system to remove the lower courts from politics; (3) the empowering of the governor to appoint a commission to study administrative reorganization; (4) revision of the entire tax system, with the appointment by the governor of a special commission to formulate a system; and (5) a complete revision of the entire system of control of public utilities, based on the recommendations of a commission appointed by the governor. Of these recommendations, the fourth only was adopted by the General Assembly.

Governor Cross himself, in commenting on the legislative output, said: "Among the best things were a state-wide liquor control law, a minimum wage law, the authority to appoint an expert commission to study and revise the tax structure of the state and its municipalities, a municipal finance and unemployment relief commission, and amendments to the banking laws." He approved the scale of salary cuts for state officers and employees.

In his farewell message, Governor Cross expressed regret that the legislature had done nothing to remedy the situation existing in the lower courts, to provide old age relief, to set up reserves against unemployment, to pass the forty-eight hour bill, to reduce expenses of the highway department, and to authorize the appointment of a commission to study administrative reorganization.

Florida. The recommendations of Governor David Sholtz, Democrat, transmitted in his messages to the legislature in a regular session lasting from early April until June, were in most instances adopted by that body. Some of the principal measures passed at the governor's suggestion were: consolidation of minor agencies into a conservation department; a beer

regulatory law; provision for a state convention to vote on repeal of the Eighteenth Amendment; reduction of the cost of motor vehicle license tags to $5, $10, $15, and $20, according to weight; requirement that all state and county employees, including teachers, must reside in Florida two years prior to employment; an anti-nepotism law, prohibiting officials from employing more than one relative, which relative must be the main support of a family; provision that the state board of education control expenditures of state school moneys apportioned to counties; a reforestation act providing moderate taxes on cut-over lands, beginning at three cents an acre and increasing as the timber grows; re-allocation of a part of the seven-cent gas tax received by the state to buy county bonds at market prices; and a constitutional amendment which, if adopted, as an observer in the state reports to be practically certain, will exempt from taxation homes and as much as 160 acres of land attached thereto, and not valued at more than $5,000.

The governor's insistence on reduction in appropriations and on reduced salaries and travelling expenses for state officers resulted in acceptance of these recommendations. The legislature also enacted laws approved by him requiring an investigation into the cost of school books; providing that state school funds be used to pay teachers' salaries and the cost of transporting pupils; creating a state board to handle federal funds; providing bank relief legislation; making possible the construction of two bridges and a cross-state canal; and providing for redistricting of circuit judges.

Of executive proposals which failed of enactment, probably the most important was a public debt funding measure which was passed by the senate but did not come to a vote in its final form in the house. This was designed to give relief to cities, counties, and special tax districts overburdened with bonds. Other proposals not adopted dealt with workmen's compensation; the abolition of certain minor administrative agencies; limitation of the number of justices of the peace and constables, and a constitutional amendment abolishing both offices; regulation of motor trucks and buses; and restrictions on the enactment of local and special legislation.

Illinois. Governor Henry H. Horner, the second Democrat to be elected to the governorship in Illinois in the last thirty-six years, addressed his first message early in January to a General Assembly containing Democratic majorities in both houses. In spite of this situation, difficulties between the up-state (Chicago and Cook county) and the down-state factions of the party prevented a thoroughly harmonious relationship between the executive and legislative branches.

One of the most important recommendations in Governor Horner's program was the passage of a retailers' occupational tax act in order to pro-

vide relief for the unemployed and destitute. Such an act was passed, imposing a tax upon persons engaged in selling tangible personal property at retail at the rate of two per cent on gross receipts. For the first six months the proceeds were to be used for relief purposes and after that time for the abatement of the state general property tax.

The legislature did not accept the governor's proposed amendment to the state constitution to permit the classification of property for purposes of taxation, nor the legislation which he advocated enabling the state tax commission to assess the capital stock of certain corporations which is now assessed locally. A material aid in enforcing the collection of taxes in Cook county has resulted from two acts, one authorizing the appointment of the county tax collector as receiver for large buildings and another permitting the application of rents and other receipts to the payment of taxes.

The proposals relating to prohibition repeal and state control of liquor which the governor advanced were adopted. These included repeal of the state prohibition laws; legalization and taxation of the sale of non-intoxicating alcoholic beverages (the state is receiving considerable revenue from this tax); provision for a convention to repeal the Eighteenth Amendment (the convention has met and voted repeal); and the creation of a commission to study problems of regulation of intoxicating liquors when such liquors are legalized.

Governor Horner included definite promises of economy in government in his campaign platform, and he continued to advocate such economy after his election. Largely due to his insistence, appropriations for the coming biennium were reduced approximately twenty-five per cent from those of the 1931–32 biennium. Certain state departments were consolidated, and the pay of state employees was reduced. The governor also aided in securing the passage of an act providing for the consolidation of the numerous park districts in Cook county, which consolidation, if approved by the voters upon referendum, is expected to result in considerable saving.

The governor advocated and the legislature enacted legislation providing a greater supervision and regulation of the issuance of securities and requiring the disclosure of additional information to the purchaser of securities; laws giving the Illinois commerce commission greater control over the capitalization and rates of utilities and more supervision over their affairs; and legislation imposing more stringent regulations concerning the investments of insurance companies and giving the insurance department greater powers in regulating and supervising insurance companies. The governor's proposal for revision of state banking laws was not adopted.

A resolution was passed by the legislature, on the governor's recommendation, providing for submission to the voters in 1934 of the question

of calling a convention to revise the state constitution. Although the congressional districts in Illinois which were established in 1901 have not been reapportioned since that time, the legislature did not follow the governor's recommendation that such a reapportionment be made.

In 1927, legislation was enacted making it impossible to question the right of certain state officers to their office by writ of *quo warranto*. Governor Horner advocated repeal of this law, which was done, making state officers subject to ouster by *quo warranto*. He also favored the passage of a series of bills to provide for the commitment of convicted persons to the department of public welfare, this department after a study of the convicted person to determine the institution to which he should be committed. Heretofore, the courts have sentenced the convicted person to the appropriate institution.

Missouri. Although for a time Governor Guy B. Park, Democrat, met with difficulties in securing legislative enactment of the recommendations contained in his message of January 9, ultimately the administration program was adopted almost in its entirety by a General Assembly containing in both houses powerful Democratic majorities. Governor Park was elected on a platform of reduction of taxation and expenditures, and his inaugural message contained concrete proposals to carry this platform into effect. The decreased departmental appropriations and reduced salaries and personnel were unpopular with the General Assembly, chiefly because the party, having been out of control in the state for twenty years, was anxious to secure the fruits of its victory. A competent observer in the state concludes that the governor prevailed over the legislature because of "the strength of party leadership, widespread popular criticism of legislative inaction, and the appeal to support the governor."

Although state taxes were not reduced and the luxury sales tax was defeated, the biennial appropriations were reduced by $6,000,000. The governor was empowered to investigate governmental costs. Personnel was materially decreased, and the removal power of the executive was strengthened. Salary reductions inevitably resulted from decreased departmental appropriations and from a substantial number of piecemeal consolidation measures. Legislation was enacted to put into operation the recently ratified constitutional amendment providing for an executive budget; to create a state purchasing department; and to provide state employment for inmates of the state penitentiary after January, 1934, when the federal Hawes-Cooper bill becomes effective. The governor's recommendations that deposits in insolvent banks should be guaranteed and that the acceptance of deposits by an officer of an insolvent bank should be declared a felony were not adopted, although certain emergency banking powers were given to the executive branch. Funds were provided for unemployment relief, the congressional redistricting bill advocated by

the governor was passed, and Missouri was the thirty-sixth state to ratify the Norris Amendment. No action was taken on the recommendation to improve the rules of judicial procedure.

In speaking of the 1933 session, Professor Lloyd M. Short, of the University of Missouri, said: "While executive support for a legislative program is extremely useful and may at times be the controlling factor, it is of basic importance that the program be carefully formulated many months in advance, that efforts be made to win popular support for it in advance of the meeting of the legislature, and that among its staunch supporters, if not its formulators, there be a number of the most competent and politically powerful members of the legislative body."

New York. The newly-elected governor, Herbert H. Lehman, delivered over twenty messages to the New York legislature in its regular annual session. The senate had a Democratic majority of one, the house a Republican majority of two, and the Democratic party itself was weakened by factional struggles, creating a situation sufficiently complicated to prevent the governor from securing perfect agreement to his proposals.

Governor Lehman delivered his inaugural message on January 4. The following recommendations met with complete or partial legislative approval: suspension of mandatory increases in state aid to local areas; reduction in the total cost of education; suspension of increase in appropriations for state aid to public schools; legislation for better grading and packing of farm products; provision for city regional markets; creation of a commission to study legislation necessary in the event of repeal of the Eighteenth Amendment; creation of a minimum wage board for women and children in industry; extension of the emergency period limiting the number of hours per day and days per week for labor on public works; moratorium on expensive rights of way for new roads; legislation conferring on the public service commission authority to approve or disapprove agreements between operating companies and holding companies; legislation prohibiting operating companies from lending funds to companies holding their stock; giving municipalities the right to appear as a party in all proceedings before the public service commission or courts, affecting rates or service of utilities in their area; obtaining federal help for unemployment relief; and continuing temporary emergency relief at least until February, 1934.

The following recommendations of the governor contained in the same message were not adopted by the legislature: provision for farm-to-market roads; legislation dealing with eradication of bovine tuberculosis; encouragement of well-managed coöperative marketing enterprises; establishment of bipartisan supervision of elections in all counties; limitation of campaign expenditures; publication of campaign receipts and expenditures before election day as well as after; permission to the people of the

state to initiate amendments to the state constitution; enactment of law providing a four-year term for the governor, with elections in non-presidential years; redistricting of the state for congressional representation; legislation permitting municipalities to purchase and sell electrical energy; extension of workmen's compensation laws to include all occupational diseases; extension of the system of free employment offices; state regulation of fee-charging employment agencies; adherence to the principle that the labor of a human being is not a commodity; jury trial for persons violating injunctions in labor cases; shorter work week; unemployment insurance; raising the minimum age for child labor; and assessing the cost of regulation of public utilities upon the utilities, particularly the cost of special investigations and rate cases.

A few weeks later, Governor Lehman transmitted the budget to the legislature with a message, one of the most important of the session, practically every suggestion of which was adopted by the legislature. The governor recommended that the general fund appropriations should total approximately $216,000,000, which was cut to about $206,000,000, and $25,000,000 was deferred to the next legislature. Educational appropriations were also decreased and deferred. A temporary act permitting counties to use highway funds in their 1933 budgets, either to reduce county debts or to reduce the budgets next adopted, was passed. Another law substituted a lower amount as the unit for town highway costs in 1933. The compensation of officers and employees of the state was reduced, with protection of pension allowances. All receipts of the division of fish and game were made available exclusively to that division. Certain highway appropriations were suspended for the coming year, and funds received by single agricultural associations were limited to the amounts received prior to 1928. The legislature gave the department of education authority to survey and redistrict any county when the position of district superintendent of schools becomes vacant and to eliminate the position if feasible. The comptroller was authorized to transfer funds from two specified accounts to the general fund. A new statute provided for the charging of a fee for state publications. In the field of taxation, the governor recommended and the legislature adopted a decrease in the amount of exemption for single and for married persons, an emergency one per cent personal income tax, and an emergency additional one cent tax on motor fuel. The governor recommended a three-fourths of one per cent sales tax, and the legislature created a retail sales tax of one per cent. The governor's suggestion that the public service commission be authorized to charge fees and assess part of the cost of all investigations against companies investigated again failed of adoption.

Recommendations contained in several brief messages, each dealing with a single subject, were adopted by the legislature. One related to

appropriations for the temporary emergency relief administration, a second recommended amendments to the New York City budget act, and a third recommended amendment necessary to expedite four self-liquidating projects involving requests for funds from the United States Reconstruction Finance Corporation.

A few of the changes were made which the governor suggested in a special message relating to the budget bills introduced earlier in the session, but they did not in any case decrease or increase the original recommended appropriations.

The legislature enacted statutes providing a minimum wage board for women and children in industry, suggested in a special message. Another message approving repeal of the Eighteenth Amendment resulted in a resolution calling for a convention to be held in June, at which time New York voted for repeal. The financial difficulties of early March led the governor to recommend, and the legislature to enact, laws providing a medium of exchange for communities in the state; also laws granting additional powers to the governor, the superintendent of banking, and the superintendent of insurance.

The governor's recommendations in a message dealing with regulation of public utilities were adopted in part. The bill to decrease the percentage of stock to be held by a holding company without public approval died in committee, as did bills granting authority for municipal operation of electric plants; placing gas transmission lines under the jurisdiction of the public service commission; requiring gas and electric companies to pay interest on consumers' deposits every two years; and requiring public utilities to report to the public service commission the amount of unclaimed consumers' deposits. The legislature passed acts prohibiting operating companies from loaning their funds to holding companies without the approval of the public service commission, and permitting a municipality to bring suit in court or a proceeding before the commission. It also made approval of the commission necessary for the diversion of funds by means of loans from operating utilities to other companies, but refused to make such approval necessary for the payment of moneys by operating companies to holding companies for the services of the latter, or for the charging of the cost of marketing securities of holding companies to operating expenses.

Recommendations contained in the following two messages were not adopted: the taxation of par value and no-par value stocks alike; and permission for municipalities to own and operate public utility plants. Although there was much difficulty in arriving at a compromise, and the governor's original recommendations were greatly altered, legislation satisfactory to him and to the legislature was passed relating to state control of alcoholic beverages.

Among the eight remaining messages, the contents were accepted by the legislature in four cases and in four cases rejected. Recommendations adopted related to the creation of a Triborough Bridge authority; assistance to holders of guaranteed mortgage certificates; issuance of $60,000,000 of emergency relief bonds; and the creation of mortage protection corporations. Recommendations not adopted related to the reorganization of local governments; compulsory unemployment reserves; authorizing the public service commission to charge fees and assess part of the cost of all investigations against companies investigated; and amendments to previously introduced bills to limit their operation expressly to utility companies furnishing electrical power, and to permit municipalities to own and operate public utility plants only in connection with power generated on the St. Lawrence River. It will be observed that in more than one instance the governor made the same recommendation two or three times, the legislature finally adopting it in some cases and persisting in rejecting it in others.

A special session, called late in July chiefly to deal with the financial crisis confronting New York City, was in its early stages at the time of completion of this article, and as a consequence no results can be reported.

Oregon. Governor Julius L. Meier, Independent, addressed a series of short messages, each dealing with a single subject, to the extraordinary session of the legislature convened in January. The first message requested provision for raising revenue to replace the real property tax for state purposes. The governor reviewed the financial condition of the state and on the basis of this description advocated abolition of the general property tax and substitution of a general sales tax. Such a tax was provided by the legislature, and the measure was submitted to referendum late in July.

The governor's message advocating improved methods of control of public utilities recommended that the legislature memorialize Congress to enact legislation to control holding companies; that the public utilities commission be granted powers sufficient to enable it to protect holders of public utilities securities; that the public utilities commission be given power to regulate the annual budget of expenditures of public utilities; that the same officer be given jurisdiction over transactions between a utility and the parent company or any affiliated company; that provision be made for recapture of excess earnings, and that payment of service fees to a holding company by a utility on a percentage basis of gross revenue be prohibited; and that favorable consideration be given laws confining, as far as possible, the carrying on of public utility business within the state to corporations organized under the laws of Oregon, and to a law assessing the expense of investigations by the public utilities commissioner against the utility investigated. A very comprehensive act in line with these recommendations was enacted.

A third brief message dealt with the monopolistic activities of the American Telephone and Telegraph Company and the inadequacy of attempts at regulation by state governments. The governor requested the legislature to memorialize Congress to provide an investigation of the situation and to authorize control of telephone rates and services by the United States Interstate Commerce Commission, and he repeated his recommendation that costs of investigation of a utility by the state should be assessed against the utility.

In connection with the revenue-raising program under consideration by the legislature, Governor Meier devoted a special message to the problem of state aid for war veterans, suggesting a thorough investigation, the substitution of some other form of revenue than the property tax, and the reorganization on more economical lines of the machinery administering this function.

In response to the governor's request for unemployment relief, a state unemployment relief committee was created and a system of administering relief funds was set up. Another message was devoted to a suggestion for a material reduction in motor vehicle license fees, which recommendation was adopted by the legislature. Governor Meier wrote a brief message suggesting to the legislature that it memorialize Congress urging the early enactment by that body of two bills dealing with a suspension in payment of charges due from federal reclamation project settlers to the United States, and with a loan to the reclamation fund to replace the income thus suspended.

On February 1, Governor Meier very briefly informed the legislature that, through a loan of $2,000,000 to the state by various Portland banks, it had been possible to avoid placing the state on a warrant basis, and he thanked the legislature for its coöperation in this emergency. A few days later, another message discussed the problem of the property tax load in the 2,700 local subdivisions of the state and advocated increased state control of their finances, with the specific recommendation that the scale of salary reductions adopted for state officials be applied to the salaries of local officials. On March 3, the governor recommended legislation empowering the banking board to regulate, and if necessary to suspend, mortgage foreclosures. This board had previously been given authority to protect bank depositors, and it appeared desirable to have the same agency in control of both functions.

Pennsylvania. Governor Gifford Pinchot, Republican, delivered two important messages in January to the General Assembly which convened at that time and was in session until May. Although members of his party were in a majority in both houses, lack of harmony between the governor and the Republican organization of the state resulted in partial defeat of his proposals for legislative action.

A competent observer in the state mentions the following items as outstanding in the governor's legislative program: that the state take over for maintenance and construction the remaining 53,000 miles of second-class township roads; that the department of revenue he authorized to assess the four mills tax on intangible personal property instead of having counties collect this tax, and that one-half of the increase resulting from this change of the system of collection go to the state; that the same department be authorized to appraise inheritance taxes through its own employees and to appraise and collect the mercantile license taxes. No action was taken on any of the proposals relating to the powers of the department of revenue, although the governor's main program was involved in them and in the proposal for state control of township roads. The latter legislation failed, but the General Assembly appropriated over $11,000,000 out of the motor license funds to maintain these roads in 1934 and 1935.

No legislative action was taken on the governor's proposals that a new method of collecting taxes on capital stock of foreign corporations be established; that 425 local poor boards be abolished and all poor relief work organized on a county basis; that a state tax equalization board be created to control local assessments; that tax collectors be paid by salary instead of fees, and that local taxes be centrally collected by county treasurers paid by salary (this bill passed the senate but failed in the house); that a plan be adopted whereby a defeated candidate should take office if fraud were brought home to the successful candidate; and that the size and weight of motor trucks be reduced. A bill providing home rule in fixing local salaries in counties of the fourth to the eighth classes inclusive was passed, but was vetoed by the governor for technical reasons. In speaking of the foregoing program, an observer said that it was defeated because of opposition to further centralization of governmental affairs at the state capital, and because local political organizations refused to turn these matters over to an administration unfriendly to them.

In a radio address of May 16, Governor Pinchot mentioned with approval the enactment of a new building and loan code and a new banking code, prepared by the departments of banking and justice, respectively. He declared that this legislation was forced through by an aroused public sentiment rather than by the political forces in control of the state government. In the same address the governor expressed his extreme disapproval of the recently enacted sweat-shop legislation in these words: "The legislature could not have done a better job in behalf of the sweat shops than it did . . . if it had been owned, body and soul, by these modern slave traders;" and he said, in explanation of its enactment: "The tragedy of the whole thing is that there was no demand for such

legislation. . . . The Republican organization was willing to strike down the governmental protection that the state throws around its workers . . . in a blind and stupid and ineffective effort to hurt me politically . . . the organization hoped to tear down and break into pieces the department of labor and industry with the tragically crazy idea that in so doing it would discredit the Pinchot administration. What a price to pay for political vengeance!"

In the budget message, Governor Pinchot kept three central aims in mind—by economy and good management to make up for the slump in revenues without imposing new taxes, to provide unemployment relief without new taxes, and not only to avoid new taxes, but actually to give relief to the local real property taxpayer by reducing existing taxes. The state budget was balanced at the time (January), but the governor anticipated a $60,000,000 shrinkage in total funds for the ensuing biennium. He proposed a saving of $34,000,000 to state taxpayers and $35,000,000 to local taxpayers, and provision of $20,000,000 for unemployment relief without new forms of taxation. The total budget called for expenditures of $158,000,000. The discussion of state finances occupied the attention of the legislature until the time of its adjournment in May, and as finally passed, the state budget represented a victory for Governor Pinchot in that its total figure approximated that recommended by him. His general disapproval was, however, expressed in a letter published in the *National Municipal Review* for June, 1933, in which he made the remarkable statement that the Pennsylvania legislature had no real interest in economy and was using it in principle as a means of destroying functions.

Texas. Governor Miriam A. Ferguson, Democrat, in addition to a comprehensive budget message submitted on January 18, addressed several messages to the regular session of the Texas legislature. Accompanying the budget message, she transmitted six budget bills providing, for the biennium 1934–35, appropriations showing a reduction of over $15,000,000. Since she anticipated insufficient revenues from existing general property taxes to meet this reduced budget and a deficit remained from the preceding biennium, she advocated the passage of a sales tax and transmitted the draft of such a bill. In response to these requests, the legislature cut appropriations by approximately one-fourth; but the sales tax bill did not pass. It is probable that the proposition will be reconsidered at a special session; and, owing to the need of new revenue, especially for the support of schools, it may be enacted.

A bank moratorium bill and a bill providing a moratorium for mortgage foreclosures, each the subject of a special message, were both passed. In April, Governor Ferguson devoted a message to recommending a graduated production tax on petroleum, and the legislature passed a new oil production tax, although it did not contain the graduated feature pro-

posed by the governor. During the same month, she submitted recommendations concerning the coördination of state unemployment relief with federal relief, suggesting the creation of a special agency to handle the work; and a rehabilitation and relief commission, with an appropriation of $100,000 for the biennium, under a director appointed by the governor, was created by the legislature.

Governor Ferguson submitted a brief message asking that the department of pardons and paroles be abolished, with a transfer of its functions to the secretary of state; but the legislature permitted the bill embodying the recommendation to die on the calendar without reaching a vote. Her recommendation, favored by the leaders of the Texas oil industry, for the creation of a separate commission to handle oil and gas conservation in place of the railroad commission passed the house only to be defeated in the senate. One important defeat suffered by the governor was administered by a senate committee after passage by the house of a bill providing for the substitution of an elective highway commission of five members for the existing appointive commission of three. This proposal had been one of the main planks in Governor Ferguson's campaign platform in 1932. A $20,000,000 bond issue for unemployment relief was passed by the legislature with the governor's endorsement, subject to referendum on August 28.

Wisconsin. An observer remarked in the latter part of June that, beyond question, Governor Albert G. Schmedeman, Democrat, had been more successful in getting his program adopted than any recent governor of Wisconsin. This was accomplished in spite of the fact that, although there is an overwhelming Democratic majority in the house, the senate is predominantly Republican. The governor, in addition to his message at at the opening of the session in January, delivered a budget message and a few additional messages later in the session.

The governor recommended a general reorganization of state government to eliminate unnecessary agencies and functions, but very little was done along this line. A bill providing for semi-annual payment of property taxes, operative in 1936, was passed and approved. In response to the governor's request for readjustment of the tax system, a bill was passed reducing the interest rate on tax certificates and extending the time for tax-sale redemption, and the legislature agreed to his request for an interim committee to study the entire tax problem. The legislature passed bills extending redemption time in mortgage foreclosures, allowing farmers the same exemption from garnishment that is accorded to wage earners, and postponing the effective date of the compulsory provisions of the unemployment reserves act.

The entire program of banking legislation approved by the governor and adopted by the legislature was very important, and has resulted in

greatly increased state control of banks. Important changes quite radically revising the entire public deposits law were incorporated in statutes. The governor suggested legislation, adopted by the legislature, which repealed the small loans law and gave the banking department power to fix the interest rate on small loans. Such a maximum rate (eighteen per cent per annum in lieu of the former forty-two per cent) has already been established. Other suggestions in the first message which have been adopted by the legislature include: revision of the securities law; revision of the law relating to the assessment of expenses of the public service commission on the regulated public utilities; creation of machinery to carry out the constitutional amendment permitting municipalities to finance municipal utilities through mortgage bonds and certificates instead of general municipal bonds; repeal of the Eighteenth Amendment; and ratification of the Norris Amendment. Certain minor amendments to the law regulating public utilities, suggested by the governor, have not, as yet, even been the subject of a bill. Finally, the governor recommended in his first message the regulation of the sale of beer in such a way that revenue could be derived therefrom. Such a measure was passed, and an emergency sales tax of one dollar per barrel was imposed; although a bill changing this to a stamp tax, supported by the administration, was passed subsequently.

In his budget message, Governor Schmedeman recommended a budget reducing total specific appropriations for state departments and activities, excluding highway appropriations, by approximately $14,000,000 for the biennium—approximately twenty-five per cent. The budget act finally passed by the legislature increased the reduction by approximately $500,000.

Late in May, the governor delivered a message suggesting additional legislation much of which was enacted: exemption of loans made by the federal government or federal agencies from the emergency legislation relating to mortgage foreclosures; remission of interest and penalties on delinquent taxes for the years 1931–32 paid prior to July 1, 1934; provision for emergency relief; increase in the maximum assessments against public utilities for the expenses of the public service commission; laws dealing with reforestation and flood control to be carried out under federal acts; and grant of power to the governor to take necessary steps to procure for the state full benefit of any laws enacted for industrial and agricultural recovery. Additional bills suggested by the governor were also passed: reorganization of the banking department; repeal of all authority for a state tax on property; a chain store tax; and appropriations for committees which it may be necessary to set up in connection with any of the new federal acts.

The messages of January 12, May 24, and June 13 all included sugges-

tions for a brief session, and this possibly had some effect in hastening action on administration measures. The legislature, however, did not finally adjourn until July 25.

DOROTHY SCHAFFTER.

Vassar College.

The Kansas Legislative Council. The establishment of a legislative council marks the beginning of a new era in legislative procedure in the state of Kansas. An act of March 13, 1933, provides for a council composed of fifteen representatives and ten senators, named by the president of the senate and the speaker of the house and confirmed by majority vote of the respective houses. The council is directed to meet at least quarterly in the interim between the regular sessions for the purpose of studying problems of state-wide interest, collecting information and finding facts, and preparing a program for the succeeding legislature. The president of the senate is designated ex-officio chairman; the speaker of the house ex-officio vice-chairman; and the revisor of statutes ex-officio secretary. The act provides that "the party representation on the council shall be in proportion generally to the relative number of members of the two major political parties in each house, but in no event shall the majority party in either house be represented by more than two-thirds of the members of said council from either house."

It is made the specific duty of the council to investigate the possibilities of effecting consolidations in state administrative departments and simplifying the organization of local government, and to coöperate with the administration in devising better methods of administration and law enforcement. The council is empowered to call witnesses and take testimony. State and local government officials are required to furnish information in their possession and make such studies as are feasible. In addition, the council is authorized to engage the services of such research agencies and assistants as it deems desirable. Complete minutes of meetings must be kept, and all members of the legislature are to be kept fully informed on the council's work. Final recommendations are not required to be made public until thirty days prior to the opening of the next legislative session.

The Kansas legislative council is a development growing out of legislative practices prevailing in the state for more than half a century. Because of constitutional limitation of the compensation of members, regular sessions have been restricted to fifty days, although in one case a session extended over a period of seventy days. In 1875, biennial sessions were substituted for annual sessions by the adoption of a constitutional amendment. The operation of these two constitutional provisions has meant that the legislative branch of the state government has functioned

but ten per cent of the time. Contrary to the situation in some states, comparatively few special sessions have been called in Kansas. The shortcomings of such a system are known to all students of government. Some bills are forced through without adequate consideration. Other highly important matters are unfavorably reported or fail to reach a vote. At the close of the session a mad scramble ensues in the attempt to get bills passed before the time set for adjournment. Often the clocks are stopped because of a mix-up in appropriation bills or the last minute failure of a conference committee to reach an agreement.

Each new legislature contains a number of members without previous legislative experience. Most of the legislators arrive at the capital with two or three pet bills in their pockets, but without having in mind a well worked out program to meet the needs of the state as a whole. Confronted by more than 1,400 bills, the average member finds it expedient to turn his immediate attention to local bills. Often the committees are not able to report out important public bills until the last two weeks of the session. Largely due to mechanical difficulties, legislatures have suffered criticism and loss of prestige. The prevailing tendency is to enhance the powers of the executive. The people turn to the governor for leadership. But an inexperienced governor elected in November may have considerable difficulty in shaping up a satisfactory program by the first of January. An examination of the situation will show that the governmental system is thrown out of balance by the intermittent character of the legislative process. On the other hand, administration and adjudication are practically continuous in operation. The function of the legislature in supervising administration as a board of directors must be performed within a few hectic weeks of the biennial session. At such time there is little opportunity for the average legislator to get a true picture of the workings of the administrative branch. The legislative council was created in the hope that some of these conditions might be remedied.

The council set up by the Kansas legislature differs from the executive council of Wisconsin and the legislative council proposed in the Model State Constitution. The Wisconsin executive council consists of five assemblymen and five senators and ten other citizens appointed by the governor. Among its other duties, the council is to provide a procedure for the purchase of supplies, have charge of the leasing of quarters for state offices, and formulate rules governing the custody and handling of materials procured through the state purchasing bureau. A committee of the executive council on business economics deals with the long range economic problems of the state. The Kansas legislative council has none of these duties. Its primary function is to prepare a legislative program, very much as provided for in the Model State Constitution. The difference is that the governor is not a member of the Kansas council, and there are

twenty-five instead of seven legislative members, who are appointed rather than elected by proportional representation. The job of surveying the fundamental economic trends and problems of the state, assigned to the Wisconsin committee on business economics, has in Kansas been assumed by the Kansas economic council organized under the leadership of the state chamber of commerce.

The sponsors of the Kansas legislative council have thought of it as purely a creature of the legislature. It is constituted entirely of members of the legislature. Its chief purpose is to strengthen the legislative branch of government and develop legislative leadership. In providing for a council, the Model State Constitution also seeks to coördinate the functions of the legislative and executive departments, and to facilitate the formulation of a common program by the governor and the legislature. While the attainment of such ends was not disparaged by the Kansas legislators, no specific machinery for their accomplishment was set up, because of the feeling that it would tend to weaken the council. Experience with a number of special commissions appointed by the governor has shown that the legislature has felt no responsibility for carrying out the recommendations of such bodies. Their reports have generally been ignored despite the fact that the membership of such commissions has usually included a representative or senator. By formally recognizing the sole responsibility of the legislature in matters of this kind, there has been no intention of placing obstacles in the way of coöperation between the governor and the legislature. Although the governor is not a member of the council, it is not anticipated that friction will arise between the two. The governor's legislative and political powers are in no wise weakened, and his position of leadership may be strengthened. He will have ample opportunity to combat the policies of the council in case they meet with his disapproval.

The principal arguments advanced in the legislature in behalf of the legislative council bill were that the council would have time to give thorough consideration to bills of paramount public importance, and would be able to present a program upon which the succeeding legislature could immediately go to work. Objections were voiced against the creation of another commission, and the oft-heard charge was repeated that special commissions had accomplished nothing. It was recalled that the school code commission (1927), the tax code commission (1929), and the public welfare commission (1931) were authorized by the legislature, but that their findings and recommendations had been largely ignored. In answer to these objections, it was pointed out that the legislative council was not to be an administrative commission, but a sort of executive committee of the legislature. The weakness of the special commissions named by the governor lay in the fact that their personnel was not represented

in succeeding legislatures in sufficient numbers to make their recommendations a vital part of the legislative program. The council must be large enough to carry back to the standing committees of the legislature a knowledge of the work of the council, and must also be representative of the various geographical areas and economic interests of the state, in order to maintain the confidence of the legislature and the public. It has been considered essential that the council so conduct itself that legislators who are not members shall become interested in its work, even to the extent of serving in an advisory capacity to committees of the council. The necessity of establishing a procedure that will convince the council member that his political fortunes will not necessarily be affected adversely by membership in the council must be recognized as an element in the success of this experiment in legislative reform.

CAMDEN S. STRAIN.

Kansas Chamber of Commerce.

Some Problems of Canadian Federalism. The Civil War in the United States was a sobering object lesson to the fathers of Canadian federation. In drafting the British North America Act of 1867, they sought to forestall the development of those problems which the experience of their neighbor to the south had shown to be incidental to the federal system of government. The division of powers between central and local governments has been the rock on which most federations, sooner or later, have foundered, and Canadians sought to escape a similar fate by three different political devices.

First, the Canadian constitution provided a very detailed division of powers between the Dominion and the provinces, in the hope of leaving future development less dependent upon time and chance than had been the case in the United States. The second device was to enumerate in full the powers of the provinces and to reserve to the Dominion not only exclusive authority over certain subjects (the regulation of trade and commerce, for example),[1] but power to pass laws for the "peace, order, and good government of Canada in relation to all matters" not assigned exclusively to the provinces.[2] Finally, the central government was permitted to appoint the lieutenant governors of the provinces, and was given the right to disallow provincial legislation in conflict with Dominion laws or with the Canadian constitution.[3] These three provisions were designed to reduce the number of conflicts arising between the central and local governments and to confer upon the Dominion ample power to promote national interests.

In spite of the admirable achievements of those who framed the Canadian constitution, Canada has not been wholly free from the problems peculiar to this most difficult system of government. Some of these have arisen from changes which, at the time the constitution was drafted, the best of political prophets could not have foreseen, while others were lurking among the very provisions of the British North America Act.

The commonest source of federal problems, i.e., the division of powers, has proved troublesome to Canadians in spite of their careful political planning. The constitution enumerates 29 subjects over which the Dominion is to exercise exclusive legislative power. In addition, the Dominion has reserved powers which enable it to legislate for the peace, order, and good government of Canada in all matters not assigned by the constitution exclusively to the provinces.[4] Sixteen different classes of subjects

[1] *British North America Act*, sec. 91, par. 2.
[2] *Ibid.*, sec. 91, par. 2.
[3] *Ibid.*, sec. 65.
[4] *Ibid.*, sec. 91.

are listed among those assigned to the provinces,[5] and among them are such general grants of authority as the power to legislate with regard to "property and civil rights in the province,"[6] and on "all matters of a merely local or private nature in the province."[7] Thus the constitution apparently grants to the Dominion a general power to legislate for the "peace, order, and good government of Canada," and yet gives to the provinces a general power over "all matters of a local or private nature."[8] In only two instances, agriculture and immigration, were concurrent powers conferred on the Dominion and the provinces.[9]

The grant of a *residuum* of power to both the Dominion and the provinces to deal with those subjects placed by the constitution under the exclusive control of each has resulted in considerable friction and litigation. "The whole field of self-government in Canada is covered in the distribution effected by the British North America Act. Whatever belongs to self-government in Canada belongs either to the Dominion or to the provinces within the limits of the act."[10] The real difficulty lies in determining, among grants of such general powers, whether the regulation of a particular subject is within Dominion or provincial jurisdiction.

The regulation of immigration has been one of the most persistent causes of friction between the Dominion and the provinces. According to the constitution, immigration may be regulated by both the Dominion and the provinces, although provincial legislation in conflict with that of the Dominion must give way.[11] The Dominion has exclusive power over naturalization, yet the provinces may lay down the conditions which govern the right to vote.[12] Under their authority over property and civil rights, the provinces have passed laws which seriously affect immigration and the position of the alien in Canada. British Columbia, which, of all the provinces, is most affected by Oriental immigration, passed an act as early as 1890 forbidding the employment of Chinese in or about a coal mine. This measure was upheld by the provincial courts, but on appeal was declared *ultra vires* by the Judicial Committee of the Privy Council as an invasion of national powers.[13] This act had been preceded by other provincial legislation which subjected Oriental immigrants and Orientals already within the borders of British Columbia to discriminatory taxa-

[5] *British North America Act*, sec. 92.
[6] *Ibid.*, sec. 92, par. 13.
[7] *Ibid.*, sec. 92, par. 16.
[8] On this point of constitutional law, see Clement, *Canadian Constitution* (3d ed.), pp. 452–453.
[9] *B. N. A. Act*, sec. 95.
[10] Clement, *op. cit.*, p. 453.
[11] *B. N. A. Act*, sec. 95.
[12] *Canadian Annual Review*, 1923, p. 47.
[13] Union Colliery Company v. Bryden (1899), A.C. 580.

tion. Most of this legislation has also been disallowed,[14] but by no means all of it.[15] The power of the provinces to prevent voting by naturalized Japanese has been upheld by the Judicial Committee.[16]

Largely at the insistance of British Columbia, the Dominion parliament has been compelled to take action against Chinese immigration. The Chinese Immigration Act of 1923[17] forbids the immigration into Canada of all Chinese except students, members of the diplomatic corps, and visitors. In 1925, British Columbia passed a male minimum wage act[18] which was intended to eliminate the employment of Orientals at lower wages than those acceptable to native workmen. This act was declared *ultra vires* in 1928 by the Supreme Court of Canada on the ground that it applied only to the lumbering and catering businesses, and that there was not sufficient legal foundation for this discrimination.[19] Steps were taken by the provincial legislature in 1929 to remedy the defects of the act in accordance with the decision of the court.

The present relation between the Dominion and the provinces, so far as aliens are concerned, seems to be "that provincial legislatures cannot legislate against aliens, whether before or after naturalization, merely as such aliens, so as to deprive them of the ordinary rights of the inhabitants of the province; although they might so legislate against them as possessing this or that personal characteristic or habit which disqualifies them from being permitted to engage in certain occupations or enjoy certain rights generally enjoyed by other people in the province. . . . It is within the power of provincial legislatures to refuse to confer such rights upon aliens or any other class of people in the province."[20] The immigration problem remains an aspect of Canadian federalism which the future must help to solve.

A second phase of Canadian federalism which has troublesome possibilities is the relation between the Dominion and the provinces so far as foreign affairs are concerned. The constitution of Canada expressly confers upon the Dominion parliament "all powers necessary or proper for performing the obligations of Canada or of any province thereof, as part of the British Empire, towards foreign countries, arising under treaties between the Empire and such foreign countries."[21] This provision, however, was drafted with the understanding that the power to make treaties

[14] R. v. Mee Wah, 3 B.C. 403.
[15] A. B. Keith, *Responsible Government in the Dominions* (1912), Vol. II, p. 1075.
[16] Tamey Homma's Case (1903), A.C. 151.
[17] *Revised Statutes*, 1923, Chap. 38, sec. 5.
[18] *Acts of B.C.*, 1925, c. 32.
[19] Field v. International Lumber Company, 1928, S.C.R. 564.
[20] A. H. Lefroy, *Leading Cases in Canadian Constitutional Law*, p. 46.
[21] Sec. 132.

resided in the British government and not in Canada. The recent developments in Empire relations have served to transfer to the Dominion the power to make treaties independently of the British government, and, as a result, the provinces, as well as the Dominion, are concerned over the new allocation of power. The provinces are not ready to agree that the Dominion government has succeeded to the unlimited treaty-making power of the British government. Briefly put, the question is: Can the Dominion enter into a treaty which deals with subjects which by the Canadian constitution are under the exclusive jurisdiction of the provinces?

Precedents are gradually accumulating which support the view that the Dominion may, by treaty, override contrary provincial legislation, even where the subject of the legislation is quite properly under provincial jurisdiction. An act of the legislature of British Columbia in 1921 validated certain orders in council in that province forbidding Japanese to engage in certain industries. On appeal to the Judicial Committee of the Privy Council, the act was disallowed because in conflict with the Japanese Treaty Act passed by the Dominion parliament in 1913.[22] The treaty provided that in all that related to their industries and callings, the subjects of Japan were to be on the same footing as the citizens of the most favored nation.[23] A second precedent involved the regulation of the killing of migratory birds. In 1884, it was decided in Manitoba that the killing of wild game was a matter under provincial jurisdiction.[24] In 1916, Canada negotiated a treaty with the United States which laid down certain regulations for the protection of migratory birds. A year later, the Migratory Birds Convention Act was passed. On the basis of the treaty and the legislation implementing it, the Dominion Supreme Court decided that all parts of the Manitoba game protection act inconsistent with the Dominion law were void.[25]

The same problem arose over the question of Canadian adherence to the international labor conventions. These conventions dealt with such subjects as the regulation of child labor, working hours, health, insurance, and similar matters, most of which were exclusively under provincial jurisdiction. The question of Dominion-provincial relations, so far as putting the conventions into effect was concerned, was referred to the Supreme Court of the Dominion.[26] The unanimous decision of the court was that "the subject-matter is generally within the competence of the

[22] Attorney-General of B.C. v. Attorney-General of Canada, 1923, 4 D.L.R. 698.

[23] *Revised Statutes of Canada*, 1913, Chap. 27.

[24] Queen v. Robertson, 3 M.R. 613.

[25] King v. Stuart, 1925, 1 D.L.R. 12. This treaty created a similar problem in federal relations in the United States, which was decided likewise in favor of the central government in the case of Missouri v. Holland, 252 U.S. 416.

legislatures of the provinces," and that, save for the regulation of Dominion employees and those in Canadian territories, the provinces were the proper authorities to put the conventions into effect.

Negotiations with the United States regarding the St. Lawrence waterway have struck the same snag. Prime Minister Ferguson of Ontario announced that "Ontario can never agree to hand over to federal authority, or to any one else, the right to deal with its water powers as they see fit in any international negotiations. We are quite prepared to sit in at any conference and expedite the negotiations, but we will not transfer the control of provincial property to any other authority."[27] This position was strongly supported by Quebec, British Columbia, and Manitoba. The latter two provinces were not directly involved in the St. Lawrence negotiations, but expressed deep concern over the federal principle involved.[28] The government, for its own guidance, submitted the matter to the Supreme Court in a series of questions. In the argument before the court, the counsel for the provinces contended that water power within their borders was property, control of which was vested exclusively in them by the Canadian constitution irrespective of the rights of the Dominion to control navigation. The judgment of the court was inconclusive because of the hypothetical nature of the questions referred to it.

An even more striking example of the self-consciousness of the provinces was revealed at the time of the Imperial Conference of 1930. Before the Conference met, recommendations had been made that the Colonial Laws Validity Act, so far as it applied to the Dominions, should be repealed. The repeal of the act would create a peculiar problem in Canada. The British North America Act provides no specific process for its own amendment. Legally, the act is a statute of the British Parliament, and it has always been understood that any changes in it could be made by that body alone. The Colonial Laws Validity Act had prevented the Dominion parliament from passing legislation contrary to any imperial statutes; but if the act were repealed, what was to prevent the Dominion from passing acts contrary to the British North America Act, itself a statute of the British Parliament? In other words, would not such a step place an unrestricted power of constitutional amendment in the hands of the Dominion parliament?

[26] 1925 S.C.R. 505.

[27] See "The Provinces and the Supremacy of the Treaty-Making Power," *Queen's Quarterly*, Aug., 1930, p. 543.

[28] As a result of the provincial attitude, Premier King, at an informal conference with representatives of Quebec and Ontario, agreed that any development of the St. Lawrence which infringed upon the property rights of the provinces could be made the subject of special agreement in each case. *Canadian Annual Review*, 1929–30, p. 105.

Such a possibility aroused the provinces to defend themselves against what they considered a serious attack upon their powers. Just before Premier Bennett left to attend the Imperial Conference of 1930, Mr. Ferguson issued a statement that the repeal of the Colonial Laws Validity Act must be postponed until the provinces could be consulted and their consent obtained. In this contention he was supported by the premiers of Quebec and British Columbia, and by the attorney-general of Saskatchewan. Because there was no time to consult the provinces before the Imperial Conference, Mr. Bennett secured a postponement of the enactment of the Statute of Westminster until some agreement could be reached. A conference between representatives of the Dominion and the provinces met in Ottawa April 7–8, 1931, and unanimously adopted certain resolutions to be included in the Statute of Westminster which would protect the interests of the provinces.[29] At the same time, Mr. Bennett agreed that a call for a Dominion-provincial conference would be issued later to devise ways of amending the Canadian constitution.[30]

Two other subjects have lately been causes of controversy between the Dominion and the provinces. These are the regulation of radio broadcasting and of aëronautics. After the question of the respective rights of the provinces and the Dominion over aëronautics had been raised by the attorney-general of Ontario in 1927, the matter was referred to the Dominion Supreme Court for settlement.[31] The decision of the court was largely against the Dominion, holding as it did not only that intra-provincial aviation fell under the legislative jurisdiction of the provinces, but that the Dominion, by adhering to the international convention relating to the regulation of aërial navigation, did not secure exclusive authority to legislate in such a way as to carry out the obligations of that convention. According to the court, the Dominion power over aviation extended only so far as might be necessary for the regulation of trade and commerce or for military purposes. On appeal to the Judicial Committee of the Privy Council, however, the decision of the Canadian Supreme Court was reversed. The opinion, delivered by the Lord Chancellor, held

[29] These resolutions are included in the Statute of Westminster as Section 7:

(1) Nothing in this Act shall be deemed to apply to the repeal, amendment, or alteration of the British North America Acts, 1867–1930, or any order, rule, or regulation made thereunder.

(2) The provisions of section two of this Act shall extend to laws made by any of the provinces of Canada and to the powers of the legislatures of such provinces.

(3) The powers conferred by this Act upon the parliament of Canada or upon the legislatures of the provinces shall be restricted to the enactment of laws in relation to matters within the competence of the parliament of Canada or of any of the legislatures of the provinces respectively.

[30] *Canadian Annual Review*, 1930–31, p. 79.

[31] Attorney-General of Canada v. Attorney-General of Ontario, 1930, S.C.R. 663.

that substantially the whole field of aërial regulation was covered by the international convention drawn up by the Peace Conference in 1919, and hence Canada under its authority to fulfill its treaty obligations has power to regulate aviation to the extent necessary to carry out that convention. The control of any remaining features of aërial navigation was allocated to the Dominion under its power to legislate for the peace, order, and good government of Canada.[32]

While the appeal regarding the control of aëronautics was still pending, the Supreme Court of Canada was called upon to determine the respective powers of the provinces and the Dominion over the regulation of radio. The matter was referred to the court by the governor-general in council after Premier Taschereau of Quebec had claimed for his province complete control over all broadcasting within its borders. Four other provinces joined with Quebec in asserting provincial rights over radio. In argument before the court, counsel for the provinces contended that control of radio involved the control of property, and that property rights within their borders fall under the exclusive jurisdiction of the provinces. Counsel for the Dominion argued that the authority to make laws for the peace, order, and good government of Canada in all matters not assigned to the provinces, as well as its power over trade and commerce, including telegraphs, clearly gives the right to regulate radio to the Dominion.[33] The court, by a divided vote, held that the control of radio is not among the enumerated powers of the provinces, and that it does not logically belong under "property and civil rights;" hence jurisdiction over radio belongs exclusively to the Dominion.[34] Two dissenting opinions expressed the view that, while the jurisdiction of the Dominion over radio is paramount, it is not exclusive. On February 9, 1932, the Judicial Committee of the Privy Council handed down its decision, affirming the majority opinion of the Canadian Supreme Court, and the exclusive right of the Dominion to regulate radio was completely established.[35]

[32] 1913 W.N. 225. See *Fortnightly Law Journal*, Dec. 1, 1931, p. 103.

[33] On this point of constitutional law, Professor Munro says: "The doctrine of 'all-residuary power in the Dominion' received a rude jolt a few years ago when the decision of the Judicial Committee of the Privy Council in the Toronto Hydro-Electric Case was handed down (Toronto Hydro-Electric Commission v. Snider et al. [1925] A.C. 412). The decision clearly intimates that the so-termed general residuary legislative power of the Dominion parliament to 'make laws for the peace, order, and good government of Canada' is restricted to cases arising out of some extraordinary peril to the national life, where the required legislation is of a character which obviously transcends provincial competence, and that under normal conditions, the *residuum* belongs to the field of 'property and civil rights' which is vested in the provinces." *American Influences on Canadian Government*, p. 28.

[34] 1931, S.C.R. 541.

[35] While the question of the legal power to regulate radio remained uncertain,

It is quite clear that the relations between the Dominion and the provinces in Canada still require considerable definition. The drift toward centralization and nationalism in Canada is being retarded by a conservative judiciary which apparently yields only when it must to the demands of national necessity. The course of Canadian federalism is following the usual pattern; a fear of centralization and an over-anxiety for the rights of the local units of government are gradually giving way to the power of a national unity created by time and necessity.

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British Malaya.[1] Malaya is a peninsula in southeastern Asia, until recently of slight importance in the affairs of the world at large. During the present century, however, it has come to be of increasing significance for its output of rubber and tin, and its population has doubled since 1900. Economic and political affairs are in the main controlled by the British, but under different legal arrangements for different sections. The Straits Settlements form a British colony, comprising several islands, including Singapore and Penang, and two small mainland areas, at Malacca and Wellesley, with a total area of 1,508 square miles and a population of over a million. Rather more than half of the region is included in a federation of four Malay States, established in 1895, under a British protectorate. These have a total area of 27,500 square miles, with a population of about one and a half millions. There are also five other petty states, with a total area of 23,486 square miles and a population of 1,250,000, under special treaty arrangements with Great Britain. The total area of Malaya is 52,000 square miles, and the total population about four millions.

Little is known of the earlier history of Malaya before the coming of the Portuguese, who established themselves at Malacca in the sixteenth century. The Portuguese were ousted by the Dutch in the following century. English traders also visited the region, and in 1786 took possession of Penang. During the Napoleonic wars, the British occupied Malacca, as well as the other Dutch East Indies, and although restored to the Dutch in 1818, Malacca was ceded to the British in 1825. In the meantime (1819), a British settlement had been established on Singapore

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radio development in Canada was virtually at a standstill. The government would announce no policy until the legal issue was settled, nor would it permit private companies to enlarge their activities until some policy could be formulated.

[1] *Laws of the Federated Malay States, 1877–1920;* Federated Malay States, *Year Book; Handbook to British Malaya* (1927); *Singapore and Malay Year Book*, 1930; *The* (London) *Times* (weekly edition), April 27, 1933; *Dominions Office and Colonial Office List.*

island, by Sir Stamford Raffles; and this was united to Penang and Malacca, under the East India Company. In 1866, the Straits Settlements were separated from India and became a distinct British colony.

British influence on the mainland was extended from 1874 to 1889 by a series of treaties with the rulers of several small Malay states, including the sultan of Johore (immediately north of Singapore island) by which they agreed to receive British residents as advisers. In 1895, four Malay states north of Johore were united in a federation under the protection of the British government. In 1919, by a treaty with Siam, the suzerainty over four other states north of the federated states was transferred to the British.

After its occupation by the British, Singapore soon became a shipping and commercial center; and its importance has increased with the development of ocean transportation and more recently with the economic development of the mainland. By 1860, it had a population of 60,000, which had increased to 228,000 in 1901, and is estimated at over half a million at the present time. It is at the crossroads of water transportation between Europe, eastern Asia, the Dutch East Indies, and Australia, and has direct steamer connections with the Americas.

The mainland of Malaya first became of commercial importance in the production of tin and coffee, but the latter has declined; and since 1900 rubber and tin have been the leading articles of shipment. Cocoanuts and pineapples are also of some importance. Both rubber and tin have been largely affected by over-production and the general economic depression in recent years.

To the earlier population at Malaya there has come, with recent developments, a large immigration of other peoples. The largest of the new elements is the Chinese, especially in the cities, where they conduct most of the retail trade and also important industrial and banking establishments. They form more than half of the population at Singapore and Kuala Lumpur. Labor on the rubber estates and in the tin mines is largely from India. There are also a considerable number of British and other Europeans in official and business positions.

The chief British official in Malaya is the governor of the Straits Settlements, who is also high commissioner for the Malay States and commissioner for the British protectorates of North Borneo, Brunei, and Sarawak in the island of Borneo. He is selected by the home government and appointed by the king.

In the government of the Straits Settlements, he is assisted by an executive council and a legislative council. The executive council consists of the governor, the general officer commanding the troops, the colonial secretary, the attorney-general, and four other officials and two unofficials. Members of the executive council are also members of the legislative council, which consists of ex-officio members, other officials, and

eleven nominated and two unofficial members elected by chambers of commerce. Singapore is the seat of government, and there are resident councillors at Penang, Malacca, and Labuan. There are municipal councils for Singapore (established in 1856), Penang, and Malacca, which consist of commissioners appointed by the governor; also harbor boards for Singapore and Penang.

The arrangements for the management of public affairs in the Federated Malay States are peculiar. Under the agreement of 1895, the rulers of the four states engaged to constitute a federation, to be known as the Protected Malay States, and to be administered under the advice of the British government. The rulers agreed to accept a British officer as resident-general, as the agent and representative of the British government, under the governor of the Straits Settlements; to furnish him with suitable accommodations and salary; and to follow his advice on all matters of administration other than those touching the Mohammedan religion. The rulers also agreed to furnish assistance to the several states, and in case of war to send troops for service in the Straits Settlements. It was further provided that the resident-general should not affect the obligations of the native rulers to the British residents in their several states; and that no one ruler should exercise power or authority in another state: Nor did the agreement curtail any powers or authority held by any of these rulers in their respective states.

Notwithstanding these provisions, according to a recent report by the permanent under-secretary of state for the colonies, the state governments found themselves "powerless to check centralization" or to "escape from the ever-expanding activities of the federal departments." To quiet the uneasiness of the rulers of the states over the loss of authority of their governments, modifications were made by Sir John Anderson[2] in 1909, and by supplementary agreements of 1912 and 1924. The powers of the resident-general (who became the chief secretary to government) were curtailed, a federal council of the federated states was created, and provision was made for conferences between the high commissioner, the chief secretary, and the residents, in order that the high commissioner should be kept in touch with the views of the native rulers.

The federal council consists of fourteen or more members: the high commissioner, the resident-general, and the British resident in each of the four federated states; the sultans of Perak, Selangor, and Pahang, and the Yam Tuan of Negri Sembilan as representing the Undang of Negri Salang; four unofficial members, to be nominated by the high commissioner; and other heads of departments or unofficial members as may be considered desirable by the high commissioner. The native rulers may appoint members of their state councils to represent them in the

[2] Governor of the Straits Settlements, 1904–11.

Federal Council. In 1931, the council was composed of twelve official and eleven unofficial members, including four Malays.

The council is authorized to pass all laws intended to have force throughout the federation; but the councils of the several member states may continue to pass laws which will have effect except in so far as they are repugnant to laws passed by the federal council. There seems, however, to be no clear distribution of powers; and the federal council may act on matters according to its own judgment.

The capital of the federation is Kuala Lumpur, a city of 100,000 population in the state of Selangor. It is a new and modern city, well laid out, with attractive public buildings, banks, and public works.

In the five unfederated Malay States, the government is nominally under the native rajas or sultans, with state councils. But under treaties and agreements made, with Johore (in 1885), and with Siam and the other states, there are British residents or advisers and other British officials in various branches of the government services.

In some branches of public service, a correlated and combined administration has been established. The railways of the whole region are operated by the Federated Malay States railway department. The postal service has also been unified; and the currency of the Straits Settlements circulates throughout the Malay States. A plan for combining the health services for the Straits Settlements and the Federated States has also been formulated.

A police force of some 4,000 men has been developed, under a British inspector-general and British and Asiatic inspectors. The subordinate force is recruited partly from Punjabs and Sikhs from India and partly from native Malays. The records of crime are satisfactory, and show improving conditions. In 1929, the number of murders was 55, as compared with 77 the year before; and robberies fell off from 210 in 1928 to 121 in 1929. With the extensive use of motor vehicles, traffic regulation has become an important phase of police work, as in other parts of the world.

During the period of general prosperity, with the great expansion of the rubber and tin-mining industries, "any discontent with the highly centralized bureaucracy at Kuala Lumpur seems to have been forgotten." But by 1920 the rulers of the federated states were again showing their uneasiness; and an official announcement in 1925 declared that the "root of the difficulty lay in the great powers of control which were vested in the chief secretary." Proposals for reforms were presented, but were sharply criticized by the European and Chinese elements.

On the surface, in the early part of 1931, conditions were quiescent. The Chinese, who form the larger part of the population of the cities and control much of the business, seemed content. In Singapore, there are two appointed Chinese members of the municipal council. But the less active native Malays were being relegated to a subordinate position; and

in the general political awakening of Asia discontent with this situation was to be expected.

Toward the end of 1932, Sir Samuel Wilson, permanent under-secretary of state for the colonies, made a visit of inquiry; and his report recommends that a definite policy of decentralization be introduced by degrees. He suggests abolition of the office of chief secretary, transfer to the states of many departments now under federal control, and creation of an advisory council to deal with general policy in such matters. Further changes would depend on experience; but suggestions are made for transfer to the states of the collection and appropriation of certain revenues, at a further stage the transfer of other sources of revenue, and ultimately the substitution of a new central machinery for what remains of the existing federal system.

British Borneo. The British sections of Borneo, which occupy about one-third of that island, are in three contiguous districts: Sarawak, Brunei, and British North Borneo. Sarawak was formerly part of Brunei, but in 1842 an Englishman, Sir James Brooke, acquired the government and control of part of the area by concession from the sultan of Brunei, and later concessions extended the district, which remains under the descendants of the first grantee, and in 1888 was placed under a British protectorate. It is a hereditary monarchy, with a rajah of the Brooke family, a supreme council of nine members (four Europeans and five Malay officials), and a general council of fifty members, composed of European and Malay officials and native chiefs, meeting every three years. There are five divisional residents and a civil service of about 100 British officials appointed by the rajah. Sarawak has a seaboard of some 450 miles, an area of 50,000 square miles, and a mixed population of about 500,000. Besides a variety of other products, petroleum is now one of the most important resources.

Brunei remains a native state, with an area of only 2,500 square miles and a population of 30,000, with a sultan (under a British protectorate since 1888), and a British resident as adviser since 1906.

British North Borneo is under the control of the British North Borneo (Chartered) Company. It has a coast line of 900 miles, an area of about 31,000 square miles, and a population of 250,000—Mohammedans and Chinese on the coast and aboriginal tribes inland. The appointment of the governor is subject to the approval of the colonial secretary of state. There are other British officials and a legislative council of nine official and five unofficial members. The system of law is based largely on the Indian codes and enactments of the Straits Settlements, administered by courts similar to those in India, with other Iman's courts for Moslem matrimonial cases, and native courts for matters of native custom.

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NEWS AND NOTES

PERSONAL AND MISCELLANEOUS

Compiled by the Managing Editor

Headquarters of the American Political Science Association during the Philadelphia meeting of December 27–29 will be at the Bellevue-Stratford Hotel. For a general announcement of plans for the meeting, see this REVIEW, August, 1933, p. 637. Meetings of the Executive Council and the Committee on Policy of the Association were held at Princeton, N. J., on September 17–18.

Among German scholars who, having lost their academic positions in Germany, have been brought to the United States as associates in the "University in Exile" connected with the New School for Social Research in New York City is Professor Hermann Kantorowicz, of Hamburg, formerly a lecturer at Columbia University and well known for his studies in the field of jurisprudence.

Professor Arnold Wolfers, of the University of Heidelberg, is lecturing, as visiting professor, at Yale University during the current semester on European governments and world economics.

Professor Charles E. Merriam, of the University of Chicago, has been serving as a member of the planning board created to assist Secretary Ickes and the Cabinet Advisory Board in developing a plan for federal public works.

Dr. John Van Antwerp MacMurray, director of the Walter Hines Page School of International Relations at the Johns Hopkins University, was on September 9 appointed American minister to Estonia, Latvia, and Lithuania. Dr. MacMurray had twenty-three years of experience in the diplomatic corps before resigning the post of minister to China in 1930.

Professor Robert T. Crane, for the past two years executive director of the Social Science Research Council, has resigned his professorship at the University of Michigan.

Dr. John W. Brewer, formerly a graduate student at Princeton University, will be a member of the political science department of the George Washington University during the academic year 1933–34 while Professor John A. Tillema is on sabbatical leave. Dr. Tillema will do advanced work at the Harvard Law School.

Professor Phillips Bradley, of Amherst College, was engaged during the summer as a public representative on one of the examining boards in the U. S. Department of Labor dealing with the personnel of the bureaus of immigration and naturalization.

Dr. Woodbury Willoughby, son of Dr. W. F. Willoughby, is an executive assistant in the Agricultural Adjustment Administration. He received his doctor's degree in political science at the Johns Hopkins University in 1932.

Professor John M. Gaus, on leave of absence from the University of Wisconsin during the current academic year, is participating in the special studies of public administration now being carried on at the University of Chicago, and is also conducting one course on the subject.

Professor Charles Fairman, of Williams College, is in London for the year on a Carnegie Endowment fellowship in international law and is making a study of the interpretation of treaties. During his absence his work at Williams is in charge of Dr. Patterson H. French.

Professor John F. Sly, of the University of West Virginia, spent the past summer in England, where he was occupied with research on local administration.

After a year spent in advanced study at the University of Berlin, Mr John D. Lewis has been reappointed instructor in political science at the University of Wisconsin.

Dr. Thomas C. Donnelly, professor of political science at New Mexico State Teachers College during the past two years, has become head of the department of political science at Marshall College, Huntington, West Virginia.

The Brookings Institution announces early publication of a study of election administration in the United States by Professor Joseph P. Harris, of the University of Washington.

Professor Joseph S. Roucek, formerly of the Centenary Junior College, Hackettstown, New Jersey, has joined the political science staff of Pennsylvania State College.

Professor Harold Zink, of DePauw University, has been granted leave of absence for a year and will devote most of the time to study in England.

Mr. Charles G. Post, who received his doctor's degree from the Johns Hopkins University last June, has been added to the staff in political science at Vassar College.

The Baldwin prize, offered for the best essay on municipal government by a college student, has been awarded for 1933 to Mr. George Budway, an undergraduate at the University of Illinois, for a paper entitled "State Regulation of Municipally Owned and Operated Public Utilities."

The twentieth annual conference of the International City Managers' Association was held in Chicago on September 18–20. The main topics for discussion were problems of finance and of personnel administration and matters pertaining to the city manager profession.

The Public Administration Clearing House has opened a Washington office in quarters provided by the Brookings Institution at 734 Jackson Place. Dr. Lewis Meriam, of the Institute for Government Research, is manager.

At the University of Texas, Drs. O. Douglas Weeks and J. Lloyd Mecham have been promoted to full professorships; Dr. Roscoe C. Martin has been promoted to an associate professorship; Mr. J. Alton Burdine and Dr. Emmette S. Redford have been appointed adjunct professors; and Miss Florence Spencer has been added as an instructor. The government staff now includes three professors, two associate professors, two adjunct professors, and three instructors, with Professor C. P. Patterson as chairman.

Dr. L. F. Schmeckebier, of the Institute for Government Research, is engaged upon a comprehensive factual study of the Veterans Administration. Dr. H. P. Seidemann is coöperating with the Bureau of the Budget on a revision of itemization of appropriation measures, and is also assisting the Agricultural Adjustment Administration in matters of organization and procedure. Mr. Fred W. Powell has been loaned to the Federal Coördinator of Transportation to serve as a member of the research staff.

Six of the eleven Brookings Institution fellows appointed for the year 1933–34 will be working on research projects in the field of political science. The appointees are Charles A. Annis (Cornell University), Jeannette L. Berger (Radcliffe College), Charles J. Coe (Brown University), Lee S. Greene (University of Wisconsin), James C. Nelson (University of Virginia), Helen C. Sands (Radcliffe College), and John H. Thurston (Harvard University).

A new consulting and research agency for cities, counties, states, and other governmental units was established on July 1 as a consulting and research division of the Public Administration Service, 850 East 58th St., Chicago, The division represents a continuation and expansion of the research work carried on by the research committee of the International City Managers' Association since 1930. The research staff of the Association, Mr. Donald C. Stone, director, and Mr. Gustave A. Moe, accountant, will serve the new division in similar capacities.

In connection with a Kansas economic council which was established under the auspices of the Kansas State Chamber of Commerce and other state organizations last fall, there has been created an advisory technical committee representing the faculties in political science, economics, and sociology in the various colleges in the state. At the organization meeting in July, Dean Stockton of the University of Kansas School of Business was selected as general chairman and four main subcommittees were appointed, with chairmen as follows: Finance, Professor W. A. Irwin, Washburn College; Agriculture, Professor W. E. Grimes, Kansas State College; Labor and Social Service, Professor W. A. Murphy, Southwestern University; and Government, Professor F. H. Guild, University of Kansas. The other members of the committee on government are J. P. Jenson (economics), University of Kansas; W. D. Moreland (political science), Ft. Hays State College; Hugo Wall (political science), Wichita University; Dean Frank A. Neff (business administration), Wichita University; H. W. Guest (economics), Baker University; and Camden Strain, Kansas Chamber of Commerce. This committee will first of all make a study of county government; but state administrative organization, public indebtedness, and fiscal administration are other topics listed for consideration during the current year.

Sixth "You and Your Government" Series. The sixth *You and Your Government* series of radio broadcasts began on October 3 and will continue for nineteen consecutive Tuesday evenings at 7:15 Eastern standard time. This series will be devoted to "The Crisis in Municipal Finance," and is being given with the coöperation of the Committee on Citizens Councils for Constructive Economy, of the National Municipal League. The subject will be covered very comprehensively in broadcasts which should be of great value to college classes in municipal government, public finance, etc., since they will present the most pertinent current aspects of this pressing problem. At the same time, the needs of the schools have not been neglected. The *You and Your Government* broadcasts have become steadily more popular with teachers and pupils. United States Commissioner of Education Zook is sending 18,000 copies of the announcement of the new

series to school superintendents throughout the country. The sixth series will also appeal strongly to public officials, who have shown a surprising interest in the current program dealing with constructive economy.

The broadcasts will be published by the National Municipal League, 309 East 34th Street, New York City, and will be obtainable at fifteen cents each, or two dollars and a half for the entire series.

On election night, there will be a special broadcast on "The Citizen and his City," by Richard S. Childs, president of the City Club of New York. On December 26, the day before the annual meeting of the American Political Science Association, the subject of "Individual Rights and the National Recovery Act" will be discussed by Isidor Loeb, Walter J. Shepard, and Raymond Moley, in a special broadcast from Philadelphia.

The program in full is as follows:

Oct. 3. The Financial Plight of the Cities
Murray Seasongood, President, National Municipal League
C. A. Dykstra, City Manager, Cincinnati, Ohio

Oct. 10. Secrets of Municipal Credit
Morris Tremaine, Comptroller, New York State
Frank H. Morse, Lehman Bros., New York City
Howard P. Jones, Secretary, National Municipal League

Oct. 17. National Credit for Local Needs
Henry T. Hunt, General Counsel, Federal Emergency Public Works Administration
Charles E. Merriam, University of Chicago

Oct. 24. Default and Its Consequences
Newton A. Farr, Chairman, Chicago Recovery Administration
Henry P. Chandler, Attorney, President, Union League Club, Chicago
A. M. Hillhouse, Northwestern University

Oct. 31. Default and Its Remedies
James M. Curley, Mayor of Boston
David M. Wood, Attorney, Thompson, Wood, and Hoffman

Nov. 7. The Citizen and His City
Richard S. Childs, President, City Club of New York

Nov. 14. Borrowing for Current Needs
E. Fleetwood Dunstan, Chairman, Municipal Securities Committee, Investment Bankers Association of America
Thomas H. Reed, Chairman, Committee on Citizens Councils for Constructive Economy

Nov. 21. The State and Local Credit
Herbert H. Lehman, Governor of New York
Howard W. Jackson, Mayor of Baltimore

Nov. 28. Pruning the City Budget
Peter Grimm, Chairman, Citizens Budget Commission of New York
Harlow S. Person, Managing Director, Taylor Society
Harold S. Buttenheim, Editor, *The American City*

Dec. 5. Why Taxpayers Strike
Carroll Sprigg, Chairman, Citizens Emergency Council, Dayton, Ohio
Leonard D. White, University of Chicago
Carl H. Chatters, Director Municipal Finance Officers Association

Dec. 12. A Voice in the Dark—A Dramatic Sketch

Dec. 19. Tax-Paying Made Easier
Philip A. Benson, President, Dime Savings Bank of Brooklyn
Sanders Shanks, Jr., Editor, *The Bond Buyer*
Carl Shoup, Columbia University

Dec. 26. Individual Rights and the NRA
Isidor Loeb, Washington University
Raymond Moley, Columbia University
Walter J. Shepard, Ohio State University

Jan. 2. New Sources of Local Revenue
Walter G. C. Otto, Mayor of New Rochelle, New York; President, New York Conference of Mayors and Other Municipal Officials
Meyer C. Ellenstein, Mayor of Newark, New Jersey
Paul V. Betters, Director, American Municipal Association

Jan. 9. Modernizing the Mechanism of Local Finance
Joseph F. Loehr, Mayor of Yonkers, New York
William P. Capes, Executive Secretary, New York Conference of Mayors and Other Municipal Officials
Thomas H. Reed, University of Michigan

Jan. 16. Regenerating Local Civil Service
Charles P. Messick, Chief Examiner and Secretary, Civil Service Commission, New Jersey
H. Eliot Kaplan, Secretary, National Civil Service Reform League
William E. Mosher, Director, School of Citizenship and Public Affairs, Syracuse University

Jan. 23. Renovating Local Administration
Lavinia Engle, Chairman, Civil Service Reform Committee, Maryland House of Delegates
A. R. Hatton, Northwestern University

Jan. 30. The Banks and Better Municipal Credit
C. C. Lester, Vice-President, Bowery Savings Bank, New York
George V. McLaughlin, President, Brooklyn Trust Co., Brooklyn, New York
Luther Gulick, Director, Institute of Public Administration

Feb. 6. The Investor and Sound Local Finance
L. I. Dublin, Vice-President, Metropolitan Life Insurance Company
Willard I. Hamilton, Vice-President, Prudential Insurance Company of America
Harold S. Buttenheim, Editor, *The American City*

Juristische Person und Staatsperson. By Hans J. Wolff. (Berlin: Carl Heymanns Verlag. 1933. Pp. xv, 516.)

If, after ploughing through this exhaustive treatise (the first of a series), the reader is not completely drunk with concepts and satiated with categories, his powers of absorption greatly exceed our own. The book represents yet another monument to German erudition. Nor does it fail to remain the approved four degrees removed from that aspect of knowledge apparent to the senses. With overwhelming learning, Wolff reviews the theories of Jhering, Jellinek, Gierke, Duguit, Hauriou, Krabbe, Kelsen, Smend, Schmitt, and many others. He dissents from all of them in greater or less degree, and many of his best points are made as negative criticisms.

Wolff distinguishes between the "state" and the "state-person." The state, at least in the juristic sense, seems identical with the legal order (p. 437). This theory approximates Kelsen's great insight that state and law are the same thing. By logically pursuing this reasoning, we could eliminate the confusing word "state" from our vocabulary and concentrate on the basic problem of what is law? Is it a purely formal, logical, or normative system? Is it those rules of conduct actually obeyed in society? Or possibly some kind of synthesis between the two? In the "social" sense, the state seems to be a legal system in so far as its creators manage to obtain actual obedience to the commands for which they claim authoritativeness and exclusive validity (pp. 322 and 343). Above and beyond all this, the positive law and the state may be "right" because in conformity with an absolute Kantian norm of categorical imperativeness, a highest law; or they may lack this ultimate sanction. The solution of this indeed inscrutable problem is conveniently "presupposed" by the "jurist."

The "state-person," like all juristic persons (e.g., the corporation), is nothing more than a personification of a complex of legal relationships which the creators or expounders of the law bring into a fictitious unity for purposes of convenience (e.g., limited liability, responsibility for torts of agents). This is a revival of the Romanist theory of "artificial personality," except that Wolff says that these "juristic aids" or "end-points of legal reference" should be in some way "verifiable in reality." Moreover, in the last analysis, and from a "legally elementary" as opposed to a "legally technical" standpoint, only men, and not juristic persons, can be the subjects of rights and duties. Seemingly this does little to cramp the style of *Rechtstechnik*, as it constructs its entities. Still, Wolff does criticize Kelsen's theory as too formal. The latter constructs a system of pure norms and is not interested in "verifying them in reality." Indeed,

he believes it impossible to mix the spheres of *Sein-Sollen* (the normative) and *Sein* (the actually existent). Wolff successfully shows that they must constantly tend to come together willy-nilly, though we should hold them apart as far as possible. He also differs from Kelsen in regarding the state-person as the state *organization* alone, i.e., as only part of the law. To Kelsen, the state is the personification of the entire legal order, there being no distinction between state and state-person.

To Wolff and German scholarship in general we recommend deep meditation over William of Occam's ever-sharp razor: "Entities should not be multiplied beyond necessity." Perhaps the reader will find much of value in the many distinctions and refinements. Or he may feel, with the reviewer and Faust, that

> "Here, poor fool! with all my lore
> I stand, no wiser than before."

MAX A. SHEPARD.

Harvard University.

Le Droit de Pétition. By MARCEL RICHARD. (Paris: Librairie du Recuil Sirey. 1932. Pp. xii, 769.)

This is a work done in the manner of a prodigious doctor's dissertation, thoroughly documented, and presented to the public through a brief and judicious preface by N. Politis. It deals with the right of petition considered in all of its aspects: philosophical foundations, historical origins, details of its evolution in France, general outlines of its development in most of the other countries of the world, its growth and significance also in the international domain. Writings of jurists and historians, mainly French, German, and English, have been searched widely, and a variety of parliamentary and jurisprudential records—in particular, an impressive array of primary sources connected with the various agencies of the League of Nations—have been sifted for whatever may bear upon this "imprescriptable human right," "qui n'a pas besoin d'être permis, mais qui a besoin de n'être pas defendu."

In the first part of the book, treating of general theory, there is made out a case, somewhat on the lines of French Revolutionary thought, for regarding the petition as well enough founded in the animal nature to protest against wrong and injury. The chapters here are a suggestive and readable argument, though many of the juristic and philosophical implications seem covered with rather an excessive facility of judgment. Part two, on the right of petition in internal public law, though quoting often at length from well known secondary sources, offers an abundance of germane material, of which some would not easily be available elsewhere. Petition appears not only in its historical rôle as a last refuge of the weak,

but also as an ancestor of the more finished kinds of legal resource to which it has itself lost ground, such, for example, as the legal idea of "excess of power."

Finally is shown the increasing use, since 1919, of petition in the international sphere, and the significance of this development in its relation to general juristic trends: the destined demise of the dogma of national sovereignty, the gradual raising of individuals to the rank of subjects of international law, and the assigning to those of the necessary jurisdictional resources. The manner and the extent to which since the war the right of petition has been conceded to national minorities, to the subjects of mandated territories, and especially to the inhabitants of the Saar, has made it somewhat a régime over individuals—one that would seem, moreover, logically to lead in the future to further extension.

The book could in places have been compressed, possibly with some gain in accuracy. The style seems unnecessarily fervent; but it is fluent, incisive, and clear.

WALTER SANDELIUS.

University of Kansas.

Les nouvelles Constitutions européennes et le rôle du chef de l'État. By EZEKIEL GORDON. (Paris: Librairie du Recuil Sirey. 1932. Pp. 436.)

It is now some forty years since the classic work of Dupriez portrayed functioning executives in the last decade of a Victorian world. That study was destined to remain a landmark in juristic literature which only the changes of war and revolution could efface. Then, for more than a decade, there was no work to take its place. Marquardsen's *Handbuch* was also obsolete, and the renowned *Jahrbuch des öffentlichen Rechts* replaced only fragmentarily the mosaic which the artifice of Dupriez had fashioned. The time was propitious for a new synthesis, from a fresh point of view. This the present work, in a measure at least, provides.

In an initial chapter remarkable for its conciseness and accuracy, Gordon gives a bird's-eye view of the provisional constitutions of the new European commonwealths and appraises the conception of executive power underlying them. Reconstructing with commendable objectivity the juridical aspects of a revolutionary-centrifugal mentality, he establishes the general premises of constitutionalism dominating Weimar, Vienna, Prague, Warsaw, and other constituent centers. It is unfortunate that, while noting that the extreme Left elements in virtually all instances favored a collegial executive, the author fails, because of the exclusion of Soviet constitutional conceptions from the volume, to observe how, as political party groups of revolutionary mentality approached communism in doctrine, their constitutional projects, in increasing degree, drew nearer to collegial executives of the Soviet pattern, chosen by

and from legislative bodies arrogating to themselves both executive and constituent powers. This is an error of perspective which deserves correction.

Dr. Gordon then turns to a discussion of the rôle of the republican chief of state, as conceived by jurists and consecrated by constituent assemblies. Contrasting the whittling down of executive power immediately after revolution with the increasing largess of authority bestowed on chiefs of state in the permanent constitutions, he notes as the fundamental, underlying motives the desire to avoid centrifugal tendencies leading to separatism and the wish to endow the chief magistrate with sufficient power to crush communism. American readers will find the brilliant analysis of opposing theories as to the part of the executive in the parliamentary system particularly stimulating.

The major part of the volume is devoted to a detailed comparative study of the status and powers of republican chiefs of state, with continual cross references to theoretical writings and concrete instances of contemporary constitutional practice. In the final part of his work, the author undertakes an intimate study of monarchical power in post-war Europe. Ignoring the glamor of the remaining monarchies of Europe and studying cold-bloodedly the realities of royal power, he comes to the conclusion that the similarity of attributes possessed by monarchical and republican chiefs of state is fundamental, the differences being primarily ceremonial. Thus he declares that "the Dominions are now independent republics without a chief of state, after the model of Estonia" (p. 330), and states that "whatever the law may be, in fact Hungary today presents the aspect of a parliamentary republic" (p. 350). Here is made manifest the continuous process of comparison and contrast of formal legality with actuality which gives to the volume its trenchant character.

Summing up the trends of the post-war period, the author notes the extraordinary development of parliamentary government, emphasizing the divergent conceptions of its nature and of that of the chief of state to which it has given rise. Finally he brings into focus the rival structures and differentiating characteristics of most of the contemporary dictatorships.

All told, the study, as the inaugural volume in a series of monographs on public law issued by the Institute of Comparative Law of the University of Paris, sets a decidedly high standard. It is regrettable that in a work so inclusive in content and destined to occupy a prominent place as a reference volume, the directors of the Institute should not have insisted on an index.

MALBONE W. GRAHAM.

University of California at Los Angeles.

Modern Germany; A Study of Conflicting Loyalties. By Paul Kosok. (Chicago: University of Chicago Press. 1933. Pp. xxi, 348.)

This book is the latest volume in the well-known series edited by Professor Merriam under the title of "Studies in the Making of Citizens." It is a survey of the institutions and forces making for and against political cohesion in pre-war and post-war Germany.

The work is divided into three parts. In the first, Professor Kosok examines the main social and economic groups of Germany and their respective civic or anti-civic attitudes. He discusses the capitalists and the landed aristocrats, the urban middle classes and the peasants, and the industrial and agricultural proletariats. In so doing, he points out the effects of various governmental measures on the loyalties of these different groups. The second part ("The State") is devoted to an analysis of political parties, the bureaucracy, the army, and the schools. The remainder of the volume—almost half—treats of "Non-State Organizations and Elements." Here one finds an excellent chapter on the church, which is especially timely now in view of the attempts of the Nazis to "totalize" the churches. Other chapters are concerned with such topics as the youth movement; localism and sectionalism; press, radio, and film, etc. There is also a good discussion of national symbolism by Isidor Ginsburg.

Dr. Kosok writes with an intimate knowledge of his subject gained from extensive residence and observation in Germany and from wide reading. The result of his labor is a volume which portrays in compact form the harmonies and disharmonies of Germany's social, economic, and political life. Except in preface and postscript, the author does not refer to the present National Socialist "Harmony," since his account ends before Hitler's advent to power. This, however, does not greatly lessen the value of the book. Dr. Kosok rightly says (p. xv): "A study of the forces that have brought about the establishment of the present Fascist dictatorship thus becomes identical with the study of all those forces that have strengthened or weakened national and civic loyalty in the past. Such a study the present volume attempts to present."

A few minor criticisms may be noted. The bibliographical footnotes bristle with German titles, but only a few English works are cited. While continuing to rely primarily upon German sources, the author might well have referred to a larger number of English titles. Moreover, of the German works mentioned, too many are of pre-depression origin, and the output of German books from 1929 to 1933 has not been sufficiently considered. It is scarcely correct to say (p. 97) that the economic crisis "set in with renewed force in 1926." No mention is made of the concordats of Prussia and Baden with the Catholic Church (p. 194). The statement (p. 228) that "the population of southern Germany is almost entirely Catholic" is an exaggeration.

Nevertheless, such criticisms should not detract from the book as a whole. *Modern Germany* is well written, interesting, and scholarly. It brings together and analyzes much valuable material and should prove of great worth to all students of contemporary German life.

Bryn Mawr College. ROGER H. WELLS.

German Cities; A Study of Contemporary Politics and Administration. By ROGER HEWES WELLS. (Princeton, N. J.: Princeton University Press. 1932. Pp. xii, 283.)

This is an interesting and useful study of German municipal structure and politics prior to the Nazi revolution. The many changes carried out in recent months make most of the accounts of organization and procedure painstakingly presented by Professor Wells no longer applicable, but this does not detract in any way from the excellence of the material as illustrative of an important phase in the development of the German political system.

With the aid of a Guggenheim fellowship, and with supplementary grants from Bryn Mawr College, Professor Wells was able to visit German cities and study at first hand the organization of the various types of German municipalities. He discreetly refrained from offering any predictions regarding the trends in German organization and activities. Doubtless, much of the system he so carefully studied still remains, but just *what* we are unable to say at the present time, or until the general confusion is cleared away.

Of particular value to American students of city government are the chapters on the Reich and the cities, and that on metropolitan areas and problems. There are many indications in the United States of a closer *rapprochement* between our urban communities and the federal government, and the German development offers much important and suggestive material at this point. Likewise, the problem of the metropolitan area is a major question of our day, and again the German experiments in this field are full of importance for us.

Politics and elections which Professor Wells describes are of less significance now than when he wrote, and the future of popular control under the Nazi rule is still to be developed. Municipal administration and municipal functions, which have probably changed less, are not dealt with fully in the plan of this volume.

All students of municipal history and of German political development will be grateful to Professor Wells for this careful and instructive sketch of the political life of what seemed to many observers the best governed cities in the world.

CHARLES E. MERRIAM.

University of Chicago.

Current Municipal Problems. By Ernest S. Griffith (Boston: Houghton Mifflin Co. 1933. Pp. 293).

Local Government in Modern England. By John P. R. Maud. The Home University Library. (London: Thornton Butterworth, Ltd. 1932. Pp. 254.)

These two books present certain striking similarities and equally striking differences. Both emphasize the social significance and the services of local government. Mr. Griffith deals with a few specific problems of American municipal government, while Mr. Maud's volume is chiefly descriptive and covers in brief form the whole range of English local government. The university background of the authors has something in common. Mr. Maud spent a year of study in America after graduating from Oxford, while Mr. Griffith studied at Oxford as a Rhodes scholar.

Current Municipal Problems is a series of essays on such subjects as the different methods of approach to the study of municipal government (with emphasis on the historical), quantitative methods in gauging public opinion, municipal measurements, charter appraisal, state administrative control, defects in the city-manager plan, metropolitan government, the rôle of voluntary agencies, and what the author terms "the dynamics of city government." Mr. Griffith's aim is to present an analysis of important questions which will be primarily of interest to the intelligent layman, but he also hopes that the expert or specialist will find "here and there a new idea of value" and that the college student can also make use of the material for collateral reading. The result is a book which breaks away from traditional lines and which sets the reader to thinking by its emphasis on underlying principles rather than a restatement of generally known facts, and by suggesting conclusions or generalizations which challenge a difference of opinion.

The chapters on "Key Points in Charter Appraisal" and "Municipal Measurements" furnish the official and student of government with a useful set of standards for testing the effectiveness of the governmental framework of his city and the quality of the service rendered by its administrative departments. In the chapter on municipal public opinion, Mr. Griffith outlines a technique which he has used with college undergraduates for comparing the attitudes of various social, racial, and economic groups toward current municipal problems, and which he hopes may prove useful as a basis for similar studies. In discussing state administrative control, the author is inclined to lean toward advice, inspection, and publicity by the central authorities instead of compulsion. A state department of local government is suggested which would be in a position "to advise on technical engineering questions, to publish comparative data on municipal administrations, to conduct surveys, to prescribe uni-

form accounting systems, and (if desired) to audit municipal accounts." Except in the field of police administration, the author is doubtful about subsidies as a means of inducing local action. As an offset to a tendency toward bureaucracy, Mr. Griffith, like Mr. Maud, lays considerable stress on the rôle which may be played by the unpaid amateur and the voluntary civic organization.

Mr. Griffith's emphasis is on the "social or human significance of city government." Throughout the book he pictures municipal government and administration, not as something "immutable and stereotyped, but as living and changing things—as alive and as capable of change as the living and ever-changing mind of man himself." The tone, although restrained, is optimistic, and the book presents an antidote to the writings of political pessimists who take a fatalistic attitude toward the possibility of improving city government and politics in America.

Mr. Maud commences his study of English local government with a description of the services provided by the local authorities, classified under the general headings of protection, welfare, and convenience, and with an explanation of the various local areas which are responsible for providing these services. Then follow chapters devoted to such topics as the parish, county and borough councils, and the electorate; council committees; local officials; finance; the central authorities which exercise control over local government; judicial control; and the history of local government. Except for the fact that such an arrangement might have detracted from the author's desire to emphasize services and functions, it would seem that the chapter on the history of local government might have been placed more suitably at the beginning of the book.

In his conclusion, Mr. Maud ventures certain prophecies regarding the future of local government in England. Summarized briefly, the most important of these are: (1) that "the services which can be developed most profitably by local authorities are town and country planning and electricity"; (2) that "the areas of local government tend to become larger" because the traditional units are often too small to deal adequately with new undertakings; (3) that the coöperation of voluntary enterprises, such as the Automobile Association in the field of public protection, and Rural Community Councils, will continue and increase; and (4) that there will probably be need for a revision of the local rating systems, with which there is at present general dissatisfaction. "A local income tax of the French or German kind could be introduced; local authorities would then be saved the vast expense of valuation and could raise the greater part of their revenue by adding a certain number of pennies to the income tax which local inhabitants would already be paying." It is suggested too, that improvement could perhaps be produced by some kind of "weighting" in assessment, "so, for instance, that an occupier who has a large

family of young children, or is unemployed, or subject to some special disability, would be assessed less highly than a neighbor whose house is of the same rental value; and also that an occupier whose income was large would be assessed more highly than the rental value of his house by itself would warrant." Mr. Maud has done an excellent job of picturing English local government clearly within brief compass. As a member of the Oxford city council, he has had first-hand contact with the system he describes.

A. C. HANFORD.

Harvard University.

State Grants-in-Aid in Virginia. By TIPTON R. SNAVELY, DUNCAN C. HYDE, AND ALVIN B. BISCOE. (New York: The Century Co. 1933. Pp. xvi, 244.)

This volume constitutes one of an extended series of studies in the field of state government published by the University of Virginia through its Institute for Research in the Social Sciences. Attention has been directed in the past chiefly toward federal grants to the states, to the neglect of the fertile field presented by an increasing use of the same device as between the states and their subdivisions.

State grants-in-aid in Virginia have been extended for the purposes of education, highways, and public health. In that state, under a strictly segregated revenue system, as much as forty per cent of all taxes go to the state treasury. Hence, as standards of service required by the state in various locally-administered activities have been raised, it has become necessary that the state make increasingly large subventions to the localities in order to relieve the burdens thus placed on the less prosperous communities. It is found that practically one-fifth of the state's disbursements are thus distributed to the counties in aid of local services.

The investigators conclude not only that the state is not contributing its just share to education, but that by making apportionment on the basis of school population there results neither equality of educational opportunity nor an equitable distribution of burdens. Likewise the plan of distribution of aid for highways and public health is inequitable, in that not infrequently the largest measure of assistance goes to the localities least in need of it.

The conclusion is reached that the system of grants-in-aid offers the best means whereby the state may bear its proper share of the cost of administering those services in which it has an interest to protect and at the same time preserve the traditions of local self-government. The authors are equally convinced that in order to avoid the pitfalls of inequitable distributions, contributions should in each case be made with

reference to the cost of maintaining the state's minimum standards and to the relative ability of the locality to provide these.

The conclusions reached appear to be the result of careful and exhaustive research and analysis, and are supported by good documentation and statistical tables. Although arrived at on the basis of a study of conditions in a single state, they should have wide interest, since the problem is one which confronts every state in the Union in some form and measure.

FRANK G. BATES.

Indiana University

The Brookhart Campaigns in Iowa, 1920–1926. By JERRY ALVIN NEPRASH. (New York: Columbia University Press. 1932. Pp. 126.)

Professor Neprash's "study in the motivation of political attitudes" is one of the most intelligent applications of quantitative methods to a political problem. He has approached the analysis of complex and elusive factors with an admirable detachment in his attitude toward both his subject and his methodology; and his conclusions are the fruit of an exacting and searching appraisal of the evidence.

The Brookhart campaigns were a happy choice for statistical analysis, since they not only concerned a candidate toward whom attitudes of approval or hostility were highly developed, but also occurred at such frequent intervals (Brookhart was seven times a candidate from 1920 to 1926) as to offer opportunity to study "the relationship of attitudes to other phenomena in time as well as in space." The study further benefits from the author's intimate knowledge of Iowa economics and politics, revealed in the concise and valuable narrative of the campaigns and in the careful statement of the economic, ethnic, and political background which precede the main concern of the study: the statistical determination of the relationship between economic factors and the vote cast for Brookhart in the several elections. This relationship is established by competent use of statistical technique, and is illuminated by the skillful moulding of the living flesh of interpretation upon the skeleton of correlation coëfficients.

Professor Neprash's findings amply justify his conclusion that "enough voters were swayed by economic considerations to determine the outcome of each election." Brookhart's first appearance before the Iowa electorate, in the 1920 primary, revealed the economic character of his support. His strength was concentrated in the cash grain and southern pasture areas, regions in which the value of livestock and other capital improvements per farm is low; and a table of correlation coëfficients (p. 73) shows "a predominantly negative relationship between wealth or economic well-

being and the Brookhart vote." In the 1922 primary, the Brookhart vote increased in the above two areas, where the depression in prices was most severe, and the correlations show a higher negative relationship with wealth. The 1922 general election witnessed an intensification of these attitudes, the most significant being revealed by the coëfficient of —.85 between Brookhart's vote and bank deposits per capita, when "normal Republicanism" was held constant. Analysis of subsequent elections reveals additional evidence to support the author's conclusion that "a major portion of the sentiment for Brookhart was based upon reaction to the depression in agriculture, and resentment against the administration for not having succored the farmer in his distress." This summary does scant justice to the wealth of detail which the author brings to his analysis and the logical skill with which he explores alternative explanations.

There is one important omission. The ethnic factors, the significance of which the author himself points out in his chapter on backgrounds, are at no point subjected to the thorough analysis which would reveal their influence upon electoral behavior. In a similar study of elections in an adjoining state, Wisconsin, the reviewer has found such significant relationship between ethnic groups and voting as to raise the presumption that they may be of importance in Iowa also.

WALLACE S. SAYRE.

New York University.

Rural Crime Control. By BRUCE SMITH. (New York: Institute of Public Administration, Columbia University. 1933. Pp. x, 306.)

That the problem of crime control in the United States is not alone one of curbing the activities of city gangsters, is ably shown by Mr. Smith. In fact, paved roads and automobiles have made distances so small that artificial boundaries have lost their former significance. Recent statistics show that the increase in the crime rate has, in general, been much greater for rural than for urban areas; but the ancient and ineffective sheriff-constable system still prevails. Additional police agencies have been added from time to time, so that the result is a complex patchwork, unintegrated and inefficient.

The subject has been treated from the historical and experimental viewpoints. Since our rural institutions have been patterned on those of England, the history and present-day experiences with the sheriff, the constable, the coroner, and the justice of the peace are studied both in England and the United States. The county constabularies in both places and the state police in the United States seem to be the most efficient units in rural crime control, though even they are not entirely successful.

County government has long been known as the "dark continent of American politics," and the system of rural crime control has been a useful tool of the local politicians. For this reason, and also because of tradition and constitutional provisions, Mr. Smith thinks radical changes will be difficult, but he hopes for a renovation. Inasmuch as no county can afford an adequate police force, a well integrated state police offers the solution. The coroner may become a subordinate of the prosecutor, but possibly the police might well assume his function, as in England. In addition, every state should provide one or more specialists in post mortem examination. The usually inefficient justices of the peace might be improved by reducing their number, increasing their compensation, raising their qualifications, extending their territorial jurisdiction, and adding a justice's clerk.

The author's extensive experience in police and crime work have given him an admirable opportunity to know at first hand the administration of crime control in rural areas, and he has been able to make direct observations both here and abroad in special preparation for this study. Both Mr. Smith and the Bureau of Social Hygiene, under whose auspices the work was done, are to be congratulated for contributing a much needed study on a very vital problem.

FRANK M. STEWART.

University of California at Los Angeles.

Industrial Discipline and the Governmental Arts. By REXFORD G. TUGWELL. (New York: Columbia University Press. 1933. Pp. 241.)

Modern Industrial Organization. By HERBERT VON BECKERATH. (New York: McGraw-Hill Book Company. 1933. Pp. xiii, 385.)

If Professor Tugwell's volume fairly represents the thought of the New Deal, we have gone a long way beyond the New Freedom. Under President Wilson, the enterprise of the small producer was to be liberated from the control of the "big interests"—by government intervention in economic affairs, by the restoration of competition to its normal basis, whatever that may mean. Under President Franklin D. Roosevelt, all enterprises, large and small, are to be regimented, ordered, and controlled, with respect to stability, security, and a fair standard of living all around. The "natural" distribution of wealth, so dear to many economists, is to be altered by the Power of the State.

Professor Tugwell writes the philosophy of the New Deal. He seeks to reduce the technical trends in industrial society to simple pattern for understanding, to discover ways in which social arrangements may further these trends, and to shape the whole process toward more desirable results. He explores the characteristics of an industrialized society, the

changing nature of work, social aids to new ways of work (regulation under the police power and control over industries affected with public interest), conditions of employment, the structure of contemporary industry, conflicts in industrial operations, and the processes of the market. Here Professor Tugwell is mainly on economic ground, although government inevitably comes into the picture, because economy functions within the framework of law. Here he is mainly empirical, concerned with disclosing the manner in which economic processes operate in American society, given its heritage.

Then Professor Tugwell shifts to government. He believes that government has *responsibility* in economic matters, especially since the economic machine operates with such jerks and fits and leaves menacing social wreckage in its train. The fact of the jerks and fits and wreckage cannot be denied. "Every statesman will be forced," he says, "in the coming years to ask himself searching questions which have to do with economic responsibility. . . . The sufferings of idle men and women must lie on the hearts of statesmen in the coming years." The economist may say, "Let them suffer," or "They will suffer more if the State intervenes." But the statesman, driven by moral forces, as well as economic forces, and compelled to give thought to the preservation of the State, cannot remain an idle spectator while the social house is on fire. If he does, he will be put out of power.

How must the statesman proceed? He must begin with things as they are. He is confronted with the problems of regulation or control, the allocation of capital, the encouragement of integration, price control, and the distribution of wealth. His task, then, is one of economic planning, the hastening of processes already under way, and other operations such as are now being facilitated under the National Industrial Recovery Act. Here Professor Tugwell does not attempt to add much that is new. Indeed, events in the federal government have already outrun his exposition.

And the future? Professor Tugwell does not try to trace the trajectory too far. Integration and control of industries on the basis of the utilities affected with public interest are sufficient for the day; perhaps this is all that the American tradition and temper will allow. It may be a step toward large scale collectivism. If so, the future will decide. Such, briefly, is the case. In few of its parts is it new. Its significance lies in the fact that it is presented by an economist of academic standing and a practitioner in the federal government. A thousand years seem to have passed since the death of William Sumner. The new generation may not know where it is going; neither did the old, for that matter. So the accounts are squared.

Professor von Beckerath's volume is built on different lines and an-

imated by a different spirit. It has the appearance of a cold and realistic analysis of the structure and function of modern industry. After a brief historical introduction comes an analysis of the technical aspects of modern production, the technical and economic functions of enterprises and plants, industry and the markets, influences operating on supply and demand, the irrational personal element in industry, and efforts to eliminate collisions between plant and market requirement through trusts and cartels. Near the end is a long chapter on government and industry, followed by general reflections. Like most economists, Professor von Beckerath approaches the State with evident dislike. He wishes that it could be kept out of the economic scene entirely, although doubtless he, like his brethren, would send in a hurry call for the police if unemployed workmen got out of hand. But he dimly realizes that this Leviathan must be considered by economists, at least in a circumspect and gingerly manner. And after this consideration of things, he comes to conclusions contrary to those of Professor Tugwell. He thinks that socialism as an outcome is improbable and that "exaggerated" government intervention may lead to "a breakdown of the present economic system." The beautiful system may break down! Why? Because industrial workers "are molded by the influence of an individualistic and materialist century." The student of political science may reply: "The State may fall into ruins because your economic system breaks down periodically with ruinous consequences." But recrimination would be useless. It is evident that none of us is doing any fundamental thinking about economics *and* politics. Professor Taussig writes an appropriate introduction to Professor von Beckerath's work.

CHARLES A. BEARD.

New Milford, Connecticut.

Insecurity; A Challenge to America. By ABRAHAM EPSTEIN. (New York: Harrison Smith and Robert Haas. 1933. Pp. 680.)

Job Insurance. By JOHN B. EWING. (Norman, Okla.: University of Oklahoma Press. 1933. Pp. 263.)

These two books reflect the growing realization that collective security through social insurance is needed to provide workers with protection against the great social risks to which they are exposed and for which their savings offer so slight a protection. Mr. Epstein's timely and authoritative volume considers the whole field of social insurance. After subjecting the various panaceas of the new capitalism such as employee stock ownership, private insurance and savings, welfare plans, and plant stabilization to a penetrating analysis which shows their inadequacy to meet the problems of insecurity, he proceeds to a discussion of unemployment insurance, old age pensions, health insurance, workmen's conpensation,

mothers' pensions, and family allowances. These subjects are treated thoroughly, with a wealth of detail, both as regards foreign experience and the peculiarly American problems, and a convincing case is made out for their adoption. Taken as a whole, the book is the best treatise on social insurance that has been published in this country in recent years. It deserves to be studied and read widely.

So far as unemployment insurance is concerned, Mr. Epstein is a supporter of the Ohio plan of state-wide pooled reserves, while Mr. Ewing is in the main an advocate of the Wisconsin system of separate plant reserves. The argument advanced in favor of the latter is that it will stimulate employers to reduce unemployment. This, however, could be true only in the case of seasonal and technological unemployment. Even then the influence would not be great, and in industries characterized by fashion or greatly influenced by the weather the preventive features would be particularly weak. The investment policies of a statewide pool, or better still a regional or national pool, could, on the other hand, be used to transfer monetary purchasing power from periods of prosperity to those of depression and thus provide a stabilizing force against cyclical fluctuations which are more severe in their effects than seasonal influences. Since the incidence of unemployment is much more severe during a period of depression upon the capital-producing industries than upon those turning out consumers' goods, the use of separate plant reserves would mean that the benefits to the workers in the former set of industries would be greatly reduced in periods of depression, while those in the latter would be relatively maintained. This inequality as between workers would inevitably and properly be resented. For these and other reasons as well, the reviewer agrees with Mr. Epstein in preferring the Ohio to the Wisconsin plan. The Wisconsin theory has, however, formed an interesting chapter in the movement for unemployment insurance, and Mr. Ewing has given us a competent explanation of its principles and a history of its progress.

PAUL H. DOUGLAS.

University of Chicago.

The Federal Reserve Act: Its Origins and Problems. BY J. LAURENCE LAUGHLIN. (New York: The Macmillan Co. 1933. Pp. xii, 400.)

This book is divided into two distinct sections: Part I, which deals with certain phases of the origins of the Federal Reserve system, and Part II, concerning the problems of the system during the depression of 1929–33. Several appendixes, containing supplementary material, are also included.

From an historical point of view, Part I is a valuable addition to the literature of the Federal Reserve system, since it serves to clarify certain

hitherto obscure points in connection with the origin of the Federal Reserve Act. In this section of the book, Professor Laughlin describes his own efforts, together with those of the National Citizens' League (of whose executive committee he was chairman), to educate the people of the country in regard to sound banking principles and the need for banking reform. In so doing, he casts a new light on the work of the League which had been deprecated by Glass and Willis, who had pictured the League as a tool of the interests favoring the Aldrich Bill (for a central bank). This attitude on the part of Glass and Willis is justified, according to Laughlin, only with respect to the New York section of the League, this group being somewhat out of harmony with the other, and collectively more important, branches of the organization. Laughlin's main effort, which is on the whole successful, is directed toward demonstrating the importance of the League's campaign of public education in obtaining satisfactory banking reform legislation.

In discussing the problems of the Federal Reserve system during the depression, Professor Laughlin takes the orthodox position that the depression is the result of maladjustments resulting from the previous period of inflation, and that a slow and painful period of readjustment is necessary to bring supply and demand into balance at proper prices. Like Anderson, Willis, Kemmerer, and others, he believes that a revival in business requires a revival in confidence, and that open market purchases and other artificial means of stimulating credit expansion by the reserve banks are bound to be futile unless accompanied by increased confidence. Laughlin places insufficient emphasis, however, on the methods which might be adopted by the banks and the government to assist a revival of confidence to take place. Although not agreeing with all of Professor Laughlin's statements, or with many of the details of his theory of money, credit, and prices, the reviewer would prefer his policies to those of the present Administration in directing the revival of business.

In order to improve the administration of the Federal Reserve system, Professor Laughlin suggests, with respect to the Federal Reserve Board, "that the members should be selected by the President of the United States from trained bankers or economists known to have had experience in the principles and practice of banking, without regard to political affiliations or geographical residence" (p. 217). He also thinks it advisable that a majority of the Board, as thus constituted, should have a veto power over undesirable legislation by Congress affecting the Federal Reserve system. Since, however, this arrangement would very likely be held unconstitutional (as Laughlin admits), it has little to commend it as a practical proposal.

In a sense, it is unfortunate that the two parts of this volume should be combined in a single book. One is historical and will appeal chiefly to

the student of banking legislation and development; the other is current and should be of interest to the intelligent lay public. Very few persons, in all probability, will be greatly interested in both of these two unrelated and distinct topics.

FREDERICK A. BRADFORD.

Lehigh University.

The Function of Law in the International Community. By H. LAUTERPACHT. (Oxford: Clarendon Press. 1933. Pp. xxiv, 469.)

The title of this book is misleading. The function of law in the international community is considered only incidentally in its bearing upon another and somewhat narrower problem, that of the limitation of the judicial process to the settlement of particular classes of disputes. The author is more concerned with the formal capacity of the legal order to deal with disputes of various kinds than with its function or purpose in terms of current social needs and objectives.

Professor Lauterpacht's thesis is in essence a denial of the well-nigh universal view that not all types of disputes arising between nations are appropriate objects for judicial settlement. While admitting that this view is firmly established in the practice of nations (he in fact deals with it as a doctrine or rule of law), he insists that it is juridically unsound, and that its pervasiveness is an important obstacle to the establishment of the reign of law in the international community. He denies that recognition of the distinction between legal and non-legal disputes in treaties of compulsory arbitration has aided in the advancement of pacific settlement; rather, in his view, it has confirmed the tendency of states to remain independent of law, while creating the appearance of submission to effective legal obligation. He holds that the exclusion of any types of disputes from the obligation of recourse to judicial settlement is in effect a negation of the existence of a legal order in the international community.

In defending his thesis, the author ranges widely over the field of international jurisprudence. He concedes the scarcity and indefiniteness of substantive rules of international law and the imperfections of existing law-creating agencies, but holds that the so-called "gaps" in international law are capable of being filled in the course of the normal exercise of international judicial activity (e.g., through recourse to "general law" and the proper exercise of judicial discretion). He views the common distinction between legal and political disputes as merely one between important and unimportant disputes, and argues that, from this viewpoint, all legal disputes are political (i.e., of some importance to the states in question), and, conversely, all political disputes are legal (in the sense

that, so long as the reign of law is recognized, they are capable of solution by the application of legal rules). According to the author, pleading the non-justiciability of disputes on the ground that they are political is "nothing else than the expression of the wish of a state to substitute its own will for its legal obligation" (p. 159).

The author likewise deals with certain practical grounds advanced in support of the limitation of international judicial settlement, such as the difficulty of obtaining impartial judges and the absence of an international legislature to bring about necessary changes in the law in keeping with changing social conditions. On the first question, he frankly recognizes that the record of past adjudications has not been wholly satisfactory, but he believes the difficulty can be largely overcome by abolishing the office of national judges on international tribunals and by improving the methods of selection of the other members. The absence of a legislature opens up the difficult problem of stability and change in the legal order. Professor Lauterpacht thinks that current emphasis on the need of change is exaggerated, and that judicial tribunals can solve the problem to a large extent through "judicial adaptation" of the law to changed conditions, e.g., by application of the doctrines of *rebus sic stantibus* and of "abuse of rights," and by extension of judicial legislation by the will of the parties.

Professor Lauterpacht's thesis has an important bearing upon current efforts to develop peaceful methods of settling international disputes, and is certain to be widely discussed. His reasoning is acute and is supported by an exhaustive study of past adjudications. He reveals clearly the unscientific character of traditional ways of thinking about the problem and the unworkableness of current classifications. At the same time, while his thesis is new, his method of approach is for the most part traditional, and is open to the same kind of attack which he uses so effectively against others. For example, he accepts uncritically the conventional notions of the nature of law and justice; he constantly employs terms of evaluation in analytical reasoning without first establishing his standards of value; he fails repeatedly to provide frames of reference for his general statements. One feels that, although the book is a stimulating and important contribution to the subject, it might have been far more effective if the author had paid closer attention to modern developments in the field of logic and scientific method.

FREDERICK SHERWOOD DUNN.

Johns Hopkins University.

International Politics; An Introduction to the Western State System. By Frederick L. Schuman. (New York and London: McGraw-Hill Book Company. 1933. Pp. xxi, 922.)

A valuable, interesting, and brilliant work. It is not essentially a compilation of the facts regarding international relations, but an evaluation and interpretation of the present political world order and a forecast of its probable future development. Running through the entire book is the thesis that the Western state system cannot continue as now organized. Either it must be modified by a marked increase of internationalism in popular feeling and in forms of government or it will be completely destroyed as the result of a world disaster greater even than that of the World War.

After tracing the evolution of the world's state system from the city states of the ancient Mesopotamian valley to the present time, and describing the legal basis and the international organization of the family of states—essentially a summary of international law—the author studies the forces which have created and now control the modern state. These are found to be the various manifestations of intense nationalism, which is termed "the political philosophy of the bourgeois nation-state." Nationalism, in both its political and economic aspects, is analyzed carefully and its results in clashing national policies are described. It involves a constant competitive struggle for power between rival states, one of the most provocative forms of which is imperialism, and this struggle results inevitably in war.

The concluding section of the book is devoted to a consideration of the probable future of the Western state system. Dr. Schuman is convinced that it faces "the alternatives of destruction or of radical reformation." If the Western nation-states continue to practice their "diplomacy of power, profits, and prestige," it will result in "a progressive and accelerated disintegration of the world economy and a relapse of the Western world into international anarchy, war, and suicidal combat between the imperial Powers. In the course of such a new Armageddon, the Powers will deal themselves a *coup de grace* as deadly as that dealt to the decadent world of Rome by the migrating barbarians." Of the various means suggested for averting such a catastrophe and preserving international peace, the author finds little hope in a limitation of armament, since it does not deal with the cause of the world's malady—competitive nationalism. Neither is there any help in sanctions, such as those contemplated in Article XVI of the Covenant of the League, for it is now apparent that the World Powers will not apply sanctions to any strong state. The Kellogg Pact and the non-recognition doctrine of Secretary Stimson are also regarded as ineffective. Neither can any agreement for providing "secur-

ity" avert war, since "security" means to such Powers as France the maintenance of the *status quo*, and peace upon such a basis will never be accepted by the states which are dissatisfied with their existing territory and world position. In fact, no means can prevent war so long as the existing state system remains unchanged; "the contemporary crisis of the world society cannot be resolved by the independent and uncoördinated action of national governments." "An effective scheme of international government offers the only ultimate guarantee of peace between nations," and to make this possible national patriotism must be subordinated to an effective emotional loyalty to a world order.

Dr. Schuman is obviously a thoroughgoing internationalist, and his conclusions will naturally be unacceptable to the adherents of the nationalist school. Certain of his other underlying assumptions will doubtless be questioned, and several of his specific statements—such as those regarding the origins of the World War, the reasons for American participation, and American imperialism—will be regarded by some as incorrect. As to the thesis that the Western state system faces destruction or early reform, the optimist will be skeptical; but the World War did come, and it is only fair to remember that this thesis is supported by many scholars and statesmen. In the field of international politics the number of divergent yet strongly held views and beliefs is unusually large. Whether or not the reader accepts all of the author's statements and conclusions, he will find this volume an excellent study of international politics—well-coördinated, thoughtful, scholarly, and intellectually stimulating.

GEORGE H. BLAKESLEE.

Clark University.

Recent Changes in the Recognition Policy of the United States. By J. L. MACMAHON. (Washington, D.C.: The Catholic University of America. 1933. Pp. vi, 138.)

The League of Nations and the Recognition of States. By MALBONE W. GRAHAM. (Berkeley, California: University of California Press. 1933. Pp. 79.)

These monographs are quite unlike in their approach to the subject of recognition. Mr. MacMahon has dealt with the policy of the United States, emphasizing particularly our attitudes toward Central American governments, Mexico, and Russia. The monograph by Professor Graham is concerned with juridical problems relating to recognition which arise from the admission of new states into the League of Nations.

The account of American foreign policy given by Mr. MacMahon is a clear statement of the essential events which have transpired during re-

cent presidential administrations. As an analysis or interpretation of these events, the study is less satisfying, not only on account of what has been said, but also because of its omissions. The Stimson doctrine with respect to Manchoukuo is described well, and some opinions on it are quoted, but the author is not inclined to trace its implications from a political or legal point of view. Mr. MacMahon finds that our policy of refusing recognition to Russia has been founded chiefly upon "the enemy character of the Soviet government as revealed by propaganda, communism, and, more important, world revolution," and that the original non-acquiescence of the Russian people in the Soviet régime, along with the repudiation of the debts, have been minor considerations. This conclusion is well substantiated and generally acceptable. The author's analysis of our Russian policy includes an approval of it, based almost entirely upon his fear of Russian propaganda, which he admits has been invading the country in the absence of recognition.

In his study of the relation between recognition and admission into the League, Professor Graham describes the juridical problems existing during the formative period of the League, indicates how they have been met in practice, and cites the opinions of authorities regarding them. He produces convincing evidence to show that the recognition of a state is not an essential act antecedent to admission to the League of Nations. The conclusion is also reached that, except for dominions and colonies, admission is "tantamount to recognition, or equivalent thereto, or productive of analogous effects," but not "indentic with *de jure* recognition." This would imply that separate *de jure* recognition by a League member of a new state already admitted has become a mere form. Professor Graham believes that, in time, acts of collective recognition at Geneva will supersede individual *de jure* or *de facto* recognitions. His excellent treatment of the subject constitutes a distinct contribution to the literature on recognition.

NORMAN L. HILL.

University of Nebraska.

Die Nationalitäten in den Staaten Europas. Ergänzungen. 1932. (Wien-Leipzig: Wilhelm Braumüller. 1932. Pp. 104.)

This is a supplementary volume of reports on the situation of European minorities. We have previously pointed out the importance of the original publication,[1] and this supplement is of equal value. Its significance lies in the presentation of the viewpoint of European minorities, not in any consideration of the viewpoint of the majority-states. The situation of the minorities is described as it appears to representatives of the

[1] See this REVIEW, Vol. 26, pp. 383–384 (Apr., 1932).

organizations of the European minorities which participate in the European minorities congresses, and is intended to call the attention of European public opinion to their conditions.

The reports center around the changes that have occurred since the publication of the original work. The majority of them charge that conditions are increasingly unsatisfactory. Complaints are heard from nearly all minorities of the Baltic states and of Poland, where the Ukrainian minority especially has suffered under so-called "pacification of the Ukrainian territories." As far as Central Europe is concerned, most of the space is taken up by the report of the minorities in Czechoslovakia. The German minorities criticize judicial decisions in language matters and state that the mistrust between them and the Czechs has been increasing. They charge that the increase of 232 German primary schools is unsatisfactory when contrasted with the increased number of Czech schools. They have further objections, alleging that they are oppressed economically and socially, and also by recent judicial steps by the Czechoslovak authorities against their political organizations. The fact that two German parties are still represented in the Czechoslovak cabinet is explained on the ground that the Germans are willing to coöperate with Czechoslovakia during these difficult times. The Hungarians acknowledge that Masaryk provided the endowment for the formation of the Hungarian Society of Sciences and Arts, but they characterize most of its members as the "agents" of the Czechoslovak government. The reports from southeastern Europe are for the most part filled with dissatisfied and angry statements of German and Hungarian minorities. The volume concludes with a description of the tragic situation of the Slovenian and German minorities in Italy, and with a more optimistic picture of the situation of the Catalanian minority in Spain.

The original volume had no report on the Slovak minority in Hungary, which is included in the present work. This report is strangely modest in its failure to criticize the official statistics and in its report on the Hungarian minorities legislation, and concludes that "the real situation of the Slovak minority in Hungary cannot be definitely evaluated."

This is a very valuable and lively book, with virtues and faults of more than ordinary degree. The student of European affairs will find in these often misleading arguments of enthusiastic and intensely biased advocates a measure of the emotions and prejudices, as well as of the very real grievances, of European national minorities. The net effect of such a presentation is bound to be confusing—the more so because of its admirable honesty of opinion. But one would have to look far and wide to find such meat as is here presented.

JOSEPH S. ROUČEK.

Pennsylvania State College.

French and German Public Opinion on Declared War Aims, 1914–1918. By Ebba Dahlin. (Stanford University Press. 1933. Pp. 168.)

This is a very clear, interesting, and painstaking analysis. It is a study of the reactions of the French and German peoples to the progressive war aims declared by their respective rulers. Based on the great resources of the Hoover War Library, it is a welcome and valuable addition to the hitherto neglected but growing study of public opinion.

Miss Dahlin carries her analysis of public opinion in the two countries along side by side and year by year. The result is an astonishingly close parallel in the development of the attitudes within the two great protagonist peoples—that is, if one makes allowance, as she does, for certain obvious differences, such as the fact that France was partly occupied by the enemy, had a more democratic form of government, and suffered less from food shortage.

The author's conclusions may be summarized briefly. In 1914, in both countries there was a virtual unanimity "of quiet decision and of unity of purpose" to support what was declared to be a war of defense. By 1915, "an increasing number dared to say that the danger was not one of external aggression, but of imperialistic ambition and national pride proving far more threatening to peace and understanding than any foreign enemy." In the two following years, a madness seized upon the annexationists in both countries, and a conflict took place between them and the peace-seekers for control of majority opinion. The result was the victory of a third group, the moderates, who represented the masses of the people, and who wanted a peace through right and understanding as expressed in the resolutions of the Chamber of Deputies on June 5, 1917, and of the Reichstag on July 19. "The struggle for the control of public opinion seemed to be final and to bring safety." The war ought to have ended in 1917; but, unfortunately, "imperialistic and proud chancelleries controlled diplomacy, not the moderate majorities."

Some readers, perhaps, after reading these conclusions, will think that the author's sympathies are too far to the Left, that she has been too much influenced by the Kanner and Herron Papers, and that she has overstressed the parallelism between France and Germany, selecting out of the abundance of her knowledge those materials which support her schematic treatment. Other readers, finding her account so excellent, will regret that she did not allow herself more space. The classified bibliography is also excellent, so far as it goes, but there is much that might have been added, such as Jean Cru's *Témoins*, Rosenberg's *Birth of the German Republic*, and the voluminous findings of the post-war Reichstag investigating commission.

Sidney B. Fay.

Harvard University.

Methods of Social Study. By SIDNEY AND BEATRICE WEBB. (London, New York, Toronto: Longmans, Green and Co. 1932. Pp. viii, 263.)

This book is rife with sensible remarks on matters of technical detail in the conduct of social investigation. The chapter on "The Art of Note-taking" is in praise of "One Fact, One Note." A neat distinction is drawn in the chapter on "The Written Word" between "documents" and "literature." A document is "an instrument in language which has, as its origin and for its deliberate and express purpose, to become the basis of, or to assist, the activities of an individual, an organization, or a community," and includes written executive orders, minutes of proceedings, accounts, and the like. Literature is "all other contemporaneous writings yielding information as to what purport to be facts, whether such writings originate in the desire for the intellectual, emotional, or artistic self-expression, or for the purpose of describing and communicating to others any real or imaginary event."

The discussion of the interview repeats the substance of the well-known appendix to Beatrice Webb's *My Apprenticeship*. Chapter VII is a vigorous criticism of the oral evidence before royal commissions and select and departmental committees. The treatment of many topics throughout the book is garnished and embellished by wisely chosen illustrations; nowhere does this show to better advantage than in Chapter VIII, "Watching Institutions at Work." The use of statistics is judiciously, if tersely, evaluated in one chapter; in another, "Verification" is described as the continuous exercise of critical judgment, not as a special stage of research. "Publication" is dignified in a separate chapter because the sharing of results alone sets in motion the processes of comparison from which a sound residue of knowledge may be distilled.

These and many other items of technique are handled with deft mastery; but the book as a whole suffers from the inadequate theoretical orientation of its authors. Just why "Fabianism" (or, better, "Sidney-webbicalism") is so distantly related to scientific socialism is clear from the rudimentary handling of dialectical materialism in the footnote on page 14. That which is sound about the dialectical method is not distinguished from that which is dubious; and the result does more damage to the caliber of the Webbs than it does to Marx. Lacking the dialectical approach, the Webbs neglect to locate their problem in its specific historical and social perspective. They talk about the conduct of social study as if it were a bouquet of "techniques" rather than a particular aspect of the division of labor in specific social configurations. If there has been a sound theoretical examination of the circumstances which support the sort of social study about which the Webbs are talking, numerous neglected problems would have been included. What is the

procedure by which the investigator is to surmount the conventional taboos on topics of social study? What is the relationship of inquiries conducted by the private scholar living on inherited money, or from certain kinds of income-producing activity, and the scholars hired by endowed universities, foundations, corporations, or government departments? What is the technique of collaborative work (a subject which includes the scientific partnership which the Webbs exemplify and do not discuss)? What are the theoretical considerations which enable the inquirer to guide his choice of a problem with the maximum hope of contributing to "social knowledge?"

HAROLD D. LASSWELL.

University of Chicago.

BRIEFER NOTICES

AMERICAN NATIONAL GOVERNMENT AND CONSTITUTIONAL LAW

In his *The People's Party in Texas* (University of Texas Press, pp. 280), Roscoe C. Martin presents a detailed and systematic study of Texas Populism. For purposes of intensive examination of this interesting phenomenon, the author limited his study to sixty counties, which is, of course, less than one-fourth of the whole number of Texas counties. As he remarks in his introduction, Mr. Martin sought to select "type" counties, the classification relating to the degree of Populist saturation as evidenced in the official election returns. Such is the accepted technique for modern "scientific" analysis of political and social phenomena, but there remains always the danger that the results achieved may be true only of the specimens examined, and not of the larger collectivity. There still remains a substantial amount of research and analysis before we develop an accurate understanding of the causes and results of reform, protest, and other third parties. If there is an important deficiency in the present study, it is insufficient attention to the presentation of the economic background. For long we have accepted as incontrovertible the assumption that economic insecurity produces the protest party. To construct tables showing the percentage of improved farms, the per-acre valuation, and the per-acre value of farm products may reveal tendencies, but there are other important facets of the economic problem that ought to be considered. For instance, what was the average family income in protest counties? How did that compare with the family income of non-Populist counties? What effect does a dire economic depression, and especially a money panic, have upon the creation or continued existence of a protest party? While the study is a distinct contribution to the literature on third parties, the author probably should have expanded his chapter on leadership. Populism prospered among evangelical Protestant

people who, as Lord Bryce once remarked, exhibited the highest voltage of religious fanaticism; and the leaders of Texas Populism exhibited a self-righteousness that made contradiction appear as a denial of the omnipotence and omnicompetence of God. The chapters on campaign techniques, party organization, and party press are well done, and on the whole the study constitutes a splendid piece of work.—CORTEZ A. M. EWING.

Breaking completely with the traditional legal view of free private enterprise as developed by the Supreme Court in interpreting the Constitution and the federal anti-trust laws, the somewhat terrifying yet loudly acclaimed National Industrial Recovery Act extends into the domain of private business legal and economic concepts which, prior to its passage, were restricted to public utilities and business affected with a public interest. Recognizing that this momentous piece of legislation is limited to two years, and that at the end of this experimental period the country may either revert to the old system contemplated in the Sherman Act or continue partly or wholly under the new one, Mr. Benjamin S. Kirsh, in his *The National Industrial Recovery Act; An Analysis* (Central Book Company, pp. 156) wisely refrains from prophesy and from grandiose generalizations, while succinctly describing the circumstances under which the act was passed and analyzing the statute's provisions as applicable to business and labor. As author of an earlier volume entitled *Trade Associations; The Legal Aspects* (1928), and as past counsellor to several such associations, the author has obvious qualifications for his task; and, within the limits of a small volume prepared in some haste, he has done his work well. What the act really is can be set forth today only very tentatively and somewhat mechanically; two years of administration, with the inevitable court decisions in the meantime, will alone reveal its full character and implications. To deal with these larger meanings, Mr. Kirsh promises a more extended future work.—F. A. O.

Students of the tariff question will find three recent publications of more than passing interest. *Tariff Policy of the United States* (Council on Foreign Relations, pp. vi, 126), by Percy W. Bidwell, presents an historical study of our policy, with special emphasis upon recent experiences. It was prepared as a report for the Second International Studies Conference on the State and Economic Life, held in London, May 29 to June 2, 1933. Lippert S. Ellis' *The Tariff on Sugar* (The Rawleigh Foundation, Freeport, Illinois, pp. 190) analyzes "the effectiveness of the tariff on sugar in increasing the price of sugar in the United States" . . . and measures "the costs or benefits to the various groups of consumers and producers in this country." O. Fred Bourke, in his *Europe and the American Tariff* (T. Y. Crowell Co., pp. vii, 163) surveys America's place in

world commerce and concludes that because of the realignment of economic forces throughout the world, and particularly because of the waning influence of Europe, the United States tariff must in the future serve a newly planned internal economy in which world commerce will be of lessened influence.—WALTER H. C. LAVES.

Believing that democracy in America is endangered, conceding that in its present form it is inefficient, and considering that its fundamental defect is its cumbersome machinery, Henry Hazlitt presents in *Instead of Dictatorship* (John Day Co., pp. 31) a plan of national government which would do away with Congress and set up in its place a council of twelve or thirteen persons elected for two years on a nation-wide basis under a system of proportional representation. Such a body, we are told, would serve the interests of the country as a board of directors serves those of a modern business organization, and without risk of either fascism or dictatorship. It, furthermore, would be the real government—no mere rubber stamp for a Franklin D. Roosevelt—the President being merely a member of the group, the winner of a majority of popular first choices if such appeared, and otherwise the choice of the council itself. However, we have the additional naive suggestion that at every biennial election the people should determine by majority vote whether during the ensuing two-year period the government should be presidential or parliamentary! Mr. Hazlitt has some interesting ideas, but the truest remark which he makes is that not every reader will agree with him on every detail of the proposal offered.—F. A. O.

A third edition of the late Lawrence B. Evans' *Cases on American Constitutional Law* (Callaghan and Company, pp. 1244), prepared by Archibald H. Throckmorton, follows the second edition after an interval of eight years. A truly remarkable development of the law within so brief a period, notably with respect to commerce, due process, and the police power, is reflected in the revised list of cases presented, as well as in the legal views which they embody. A new chapter entitled "Intoxicating Liquors" has been added; the range of cases dealing with the powers of the President has been amplified; and at many points earlier cases have been superseded by later ones dealing with the same questions but preferred because of presenting new interpretations or containing more interesting facts or more valuable discussions.

The principal features of a revised edition of C. Perry Patterson's *American Government* (D. C. Heath and Co., pp. ix, 938) are a new chapter on the character of American federalism, reorganization and enlargement of the chapters devoted to national administration, and the insertion of a series of twenty-nine charts and diagrams, including one of some-

what unique character depicting the route of a typical bill through the two houses of Congress. A third edition of James T. Young's *The New American Government and its Work* (Macmillan Co., pp. xx, 1024) contains twelve new chapters and is notable for its emphasis upon executive leadership, upon the relations between government and business, and upon constitutional law and court decisions.

Encouraged by the fact that, "amid much that is distressing in our public life," there has never in his experience been "so wide and profound an interest in practical politics," Professor Robert C. Brooks has brought out a third edition of his well-known *Political Parties and Electoral Problems* (Harper and Brothers, pp. xiii, 653). The general plan of the book remains unchanged, but opportunity has been seized not only to draw upon recent political history, including the presidential campaign of 1932, but to incorporate features that result from the author's experience in honors work at Swarthmore during the past ten years. The volume closes with a parallel-column exhibit of the Republican and Democratic platforms of 1932.

STATE AND LOCAL GOVERNMENT

In January, 1836, the Vermont constitutional convention, by the close vote of 116 to 113, adopted a constitutional amendment substituting for the unicameral legislature a bicameral body. To the existing house of representatives, in which all towns were equally represented, was added a senate whose thirty members were to be apportioned on substantially a population basis. Almost one hundred years after its abandonment, Professor D. B. Carroll presents, in *The Unicameral Legislature of Vermont* (Vermont Historical Society, pp. 85), the first thoroughgoing attempt to appraise the unicameral system and to discover the reasons that brought Vermont into line with the other states. The author has made an exhaustive study of contemporary official records and available newspaper files. As a result, he has been able to submit a detailed comparison of the operation of the unicameral body during its last ten years and of the bicameral system during its first decade. Numerous tables and graphs throw light upon the qualifications of members, the length of legislative sessions, the stability of statutes, and the cost of state government under the two systems. These furnish slight aid and comfort to those who are disposed to defend the bicameral system in our states, for in no really important respect does the unicameral legislature suffer in the comparison. One is therefore at a loss to understand why the people of Vermont, after nearly sixty years of generally satisfactory experience with the single chamber, should have changed to bicameralism. Professor Carroll's scholarly monograph is a contribution toward the

solution of this puzzle in state constitutional history. Apparently, however, contemporary material upon which to build a conclusive explanation is lacking.—P. O. Ray.

What Electricity Costs (New Republic Inc., pp. 231)—a symposium edited by Morris Llewellyn Cooke—consists of a series of papers presented before the Institute of Public Engineering held under the auspices of the Power Authority of the State of New York and the public service commissions of the District of Columbia, New York, and Pennsylvania. To the symposium contributions were made by a carefully selected group of electrical engineers, private and public plant executives, and public service commissioners and economists. Most of the papers reproduced have to do with the cost of distribution of electricity to domestic and rural consumers. The keynote of the conference was struck by Mr. Cooke, obviously the moving spirit, who expresses himself in the Foreword in the following terms: "American mass production techniques have lowered unit costs of practically all products in sensational fashion. But at the point where the distributive process begins we seem to lose our cunning." It was generally conceded that costs of generation and transmission have been pretty successfully broken down, while comparatively little progress has been made in connection with distribution costs.[2] The importance of completing the process is obvious when one recalls that our whole theory of charges to consumers and profits for investors is based upon the principle of cost plus. The importance of cost for the setting of class rates cannot be minimized. In fact, there can hardly be a fair classification without a more detailed allocation of distribution costs than is now possible. Without a knowledge of costs up and down the line, regulation according to current practice is bound to be defective. If this point of view be accepted, there can be no doubt as to the urgency and timeliness of the present symposium. The high point of the discussions was a paper presented by Clayton W. Pike, a consulting engineer from Philadelphia, breaking down the data presented in the annual reports of a number of electrical companies in New York State and showing the feasibility of setting up standard categories and units for a distribution costing system. Mr. Pike also suggested formula for making adjustments because of certain common variables. Samuel Ferguson, president of the Hartford Electrical Company, characterized this paper as "the first real step toward an intelligent discussion of the problem of distribution costs." These remarks justify the conclusion that this new work in the New Republic Dollar Series is a contribution of major importance; time may prove that a little

[2] Distribution as here used includes all expenses, capital and operating, direct and indirect, from the low-tension side of the sub-station to and including the customer's meter.

book of less than 250 pages was a milestone in the progressive rationalization of an important industry.—WILLIAM E. MOSHER.

FOREIGN AND COMPARATIVE GOVERNMENT

In *La Consultation direct du peuple, en dehors de l'election, d'après la constitution de Weimar* (Paris, Librairie des Facultés, pp. 656), M. Constantin C. Angelesco provides perhaps the best study which has appeared in French on the subject of direct legislation under the Weimar constitution. Unfortunately, his work is concerned only with the Reich situation (primarily in its juristic aspects), and does not cover significant aspects found in the state and local governments. The book has much to offer the inquirer for factual material. The author has used all important available sources, and has discussed the subject in considerable detail and with consistent accuracy. The quality of the book would have been improved, however, had a more satisfactory synthesis been evolved. For example, the essential facts concerning the highly significant discussions in the Weimar Assembly could have been revealed in a far more interesting fashion than by a chronological reproduction of convention speeches. Somewhat the same criticism holds for the discussion of direct legislation in practice. No adequate treatment of the part played by it in post-war German politics is to be found, notwithstanding that perhaps the most significant aspect of the entire history of the institution is its relationship to party tactics. From the viewpoint of jurisprudence, the treatment is, however, more satisfactory. The author is inclined to regard direct legislation with favor. Contrary to this viewpoint, the post-war history of the institution in the Reich rather supports the opposition of Preuss. In general, the machinery of direct legislation has been used to foster undesirable political agitation or to advance legislation which is really beyond the scope of popular competence. Direct legislation in the large modern state seems, on the basis of German experience, an unwieldy and unprofitable extension of democratic practice.—LEE S. GREENE.

Volume VII of *The Cambridge History of the British Empire* (Cambridge, The University Press; New York, The Macmillan Co., pp. xx, 759; xiii, 309), published in two parts dealing respectively with Australia and New Zealand, is quite up to the high standard of this ambitious series. The arrangement is that of topic-chapters in chronological series, including the human geography of the Dominion; the period of early exploration and settlement; two or more period-chapters each on the later political, constitutional, and economic development; relations with the Empire; the European War; and cultural development. In general, the narrative closes with 1921. All but three or four of the subjects have been allocated among a strong corps of scholars in each Dominion, including the Domin-

ion advisers, Professor Ernest Scott and Dr. J. Hight. To each part is appended an excellent classified bibliography (74 and 32 pages, respectively) of primary and secondary sources for each major topic. The text also is fully documented throughout. There are no maps, although the editors have an historical atlas in contemplation. A large proportion of each volume is of interest to political scientists. The surveys of political history are brief but adequate. The sections on constitutional development, read with those in the companion volume on Canada and Newfoundland, give a very serviceable, succinct account of the evolution of responsible government, with its attendant problems, in the British settlement colonies. True, the issue was less aggravated when it arose in Australia and New Zealand, since by then it had been met in Canada, and Liberalism was in the saddle in Britain. Since the Cambridge series is essentially historical, there is little systematic treatment of existing political institutions. Nevertheless, the problems of provincial government in the evolution of New Zealand are handled clearly, if concisely, and the chapters on Australian federalism (by Sir Robert Garran and Sir W. Harrison Moore) afford an excellent brief presentation of the issues involved in this experiment.—A. G. DEWEY.

In his *Russia in Transition; A Business Man's Appraisal* (The Viking Press, pp. xxxiv, 614), Elisha M. Friedman attempts the ambitious task of appraising the economic, political, social, psychological, and philosophical foundations and factors underlying the Soviet structure. The book is divided into five parts and an appendix. In Part III, which discusses the Five-Year Plan, agriculture, labor, industry, transportation, finance, and similar subjects, the author shows expert skill as a business analyst. He is less facile when he undertakes, in Parts I, II, and IV, historical analysis and an interpretation of the Soviet mind and behavior. *Russia in Transition* is not unlike other works written by travellers in that it endeavors to cover too much ground. This is quite evident when one finishes Part III, which is written masterfully, and compares it with the discussions of subjects outside the realm of economics; the impression gained by such reading is that the author is frequently beyond his depth. Some recommendations border on naiveté. A case in point is the proposal for a world conference on Russia (pp. 580 ff.) Whatever the book's general defects, however, it is to be classed as an honest and intelligent piece of work. It will no doubt be of interest to the better educated business men for whom it is primarily intended.—BERTRAM W. MAXWELL.

Effects of the War on Economic and Social Life in Finland (Yale University Press, pp. 125), by Lee Harmaja, director of a bureau of social

research and statistics at Helskinki, Finland, is the closing monograph on northern European countries to be published in the Carnegie Endowment's "Economic and Social History of the World War." Political matters receive only incidental attention. A similar volume on Bulgaria, in the same series, is Georges T. Danaillow, *Les Effets de la guerre en Bulgarie* (Les Presses Universitaires de France and Yale University Press, pp. 752). The latter volume is far more exhaustive than that on Finland, and though containing no chapters specifically on government, treats in a satisfying manner several aspects of state functions and activities during the war.

In his *De Valera* (E. P. Dutton and Co., pp. 286), Denis Gwynn, author of *The Irish Free State, 1922–1927*, and numerous other books on Irish affairs, has produced a vivid and trustworthy biography of one of the strangest and most contradictory figures in contemporary European politics. The book is, however, more than a biography, for the author has been interested not only in bringing to light the circumstances of and reasons for his subject's remarkable personal ascendancy, but also in analyzing the economic, social, and political program which the virile President is in these days engaged in carrying through. The last two of the ten chapters of the volume are devoted specially to this matter and reveal an extraordinary series of efforts directed at building a self-contained and independent republic.

INTERNATIONAL LAW AND RELATIONS

In *International Adjudications, Modern Series, Volume V* (Oxford University Press, pp. xv, 502), Judge John Bassett Moore carries further the third of his works deserving the appellation "monumental" with a consideration of the history and jurisprudence of three commissions dealing with spoliation claims in which the United States was a party in interest. The first was established under our treaty of 1795 with Spain. The second was set up in one of the conventions of 1803 accompanying the Louisiana Purchase; and the "three persons"—all Americans—appointed to examine the claims experienced almost incredible difficulties, the story of which is here told in full. The third was a commission appointed under an act of Congress pursuant to the Franco-American convention of 1831. The latter was really a domestic commission, its function being to distribute among American claimants twenty-five million francs, plus interest, which the French government paid "in order to liberate itself completely from all the reclamations preferred against it by citizens of the United States for unlawful seizures, captures, sequestrations, confiscations, or destructions of their vessels, cargoes, or other property." Thus while the composition of the commissions of 1803 and 1831 was not

international, the substance of the questions upon which they passed was international, and the appointment of both was authorized by treaty. The riches of this volume cannot be encompassed in a brief review. An example of the thoroughness evident on every page is the reproduction of "Typical Claims" under the treaty of 1795 from papers in the Department of State, and the re-publication entire, as an appendix, of Commissioner Kane's *Notes* on the work of the commission under the treaty of 1831. The whole of the book is knit together by the incisive, marching English which Judge Moore knows so well how to command; and each of the three essays exhibits that economy of art in which it seems that nothing to the purpose could be added or taken away.—LLEWELLYN PFANKUCHEN.

No. 16 of the Classics of International Law, published by the Carnegie Endowment for International Peace under the editorship of James Brown Scott, is devoted to the *De Iure Belli Libri Tres* of Alberico Gentili. Volume I contains chiefly a photographic reproduction of the edition of 1912; Volume II, a translation of the text by John C. Rolfe, with an introduction by Coleman Phillipson (Oxford University Press). This is the fourth of the works of Gentili to be reproduced and translated under the auspices of the Endowment. Mr. Phillipson's introduction estimates Gentili's place in the science of international law, and reflects a growing feeling that the aura justly surrounding the name of Hugo de Groot should not prevent the bestowing of other crowns. The translation (p. 9) quotes Gaius as saying: "The powers of masters are a matter of *international law;* for we can observe that among *all nations alike* masters have had the power of life and death over slaves." In general, *ius gentium* is rendered *international law*, even in cases like the above where such a translation does not fit. In other places *ius gentium* becomes *law of nations*, which is more like what it should be. Thus, on page 8 of the translation appears this sentence: "For they say that the *law of nations* is that which is in use among all the nations of men, which native reason has established among all human beings, and which is equally observed by all mankind." (Italics are the reviewer's). The photographic reproduction, however, supplies the necessary elucidation; and it should be said that Professors Gentili and Rolfe have coöperated across three centuries to renew a great work in readable and lively English.—LLEWELLYN PFANKUCHEN.

A scholarly study of the decade of coöperation in Manchuria between Japan and Russia is presented in Ernest B. Price's *The Russo-Japanese Treaties of 1907–1916 Concerning Manchuria and Mongolia* (Johns Hopkins Press, pp. xiv, 164). The volume is issued by the Walter Hines Page School of International Relations, and has an introduction by the director

of the School, Dr. John V. A. MacMurray. It is based upon original sources and gives a well-written account of the background, the negotiations, and the results of both the public and the secret treaties of 1907 to 1916. Its unique contribution is the publication for the first time of the original French texts of the four secret treaties of 1907, 1910, 1912, and 1916. It is timely, since it helps to make clear the development in Japan of an attitude toward South Manchuria and Eastern Inner Mongolia which has finally led to the creation of Manchukuo and the military occupation of Jehol. Mr. Price points out that from the beginning of the rivalry between Japan and Russia there were influential leaders in both countries who believed that their governments should reach an agreement regarding their respective interests in the Far East. After the Russo-Japanese war of 1904–05 their views were adopted. During the decade beginning with 1907, Russia and Japan supported each other in their attempts to maintain practically complete control over their respective spheres in North China. Toward this violation of the rights of China, it was the United States, of all the Great Powers, which was most strongly opposed. In fact, the effort of the United States to support the integrity of China and the Open Door in Manchuria was one of the chief circumstances which led Russia and Japan to sign the treaties of 1910 and 1912. The history of American diplomacy in regard to Manchuria from 1907 to 1910 clearly foreshadowed the position which the United States has taken in the recent crisis of 1931–33.—GEORGE H. BLAKESLEE.

In his *Fondation de l'Etat indépendant du Congo* (J. Lebegue and Co., pp. 354), Robert Stanley Thomson has written a valuable account of the origins of the Congo Free State. Most previous histories of this episode in African imperialism have been written from the Belgian point of view, either blindly praising Leopold II as a benevolent colonial administrator or treating the Belgian monarch as a rank imperialist bent on exploiting the Congo for personal gain. Professor Thomson attempts to place the episode in its true perspective as a part of the international politics of the period, without losing sight of the personal influence of Leopold in the creation of the new state. The period covered is from the Geographic Conference of 1876 to the actual recognition of the Congo Free State by the leading nations of the world following the Conference of Berlin in 1885. Access to the personal papers of Mr. Henry S. Sanford, United States minister to Belgium from 1861 to 1870, has aided the author in giving a full account of the recognition of the new state by the United States government, and access to other sources not heretofore available has provided a check on previous works relating the diplomatic maneuvers involved. The rivalries of the European Powers and their attempts to frustrate the designs of Leopold receive unusually full treatment. The study

is well documented and contains a complete bibliography.—WILLIAM C. JOHNSTONE, JR.

In his *A View of Europe, 1932* (Johns Hopkins Press, pp. vi, 153), Paul van Zeeland, director of the National Bank of Belgium and deputy director of the Bank for International Settlements, discusses the workings of economic nationalism in the life of Europe during the past decade. After a brief review of the post-war transformation of economic and fiscal relations, he analyzes the various forms of prohibitions and restrictions upon the normal trade and monetary contacts of the European countries and their effects upon the social and political life of the continent. He then appraises the utility and effectiveness of the international agencies like the League and the Bank, and the attempts to stem the rising tide of tariffs through international conferences and through such reciprocal conventions as those of Oslo and Ouchy. His conclusions are summarized by the author, a free-trade liberal and believer in the least possible interference with the workings of economic *laissez-faire*, in the following words: "If we recognize that international coöperation in economic matters is the only and the necessary attitude to take, let us realistically draw from that the practical conclusions; they are summed up in words that come back to us like a familiar melody—the suppression of hindrances to commerce, guarantees of a permanent international order, agreements for effective *rapprochement*—in short an international organization in whose shelter prosperity can flourish again with freedom for the movement of capital and goods."—PHILLIPS BRADLEY.

The Halley Stewart Lectures for 1932 were delivered by Sir Norman Angell and have been published under the title *From Chaos to Control* (Century Co., pp. 208). The question he seeks to answer is why, when "all the experts in the world are broadly in agreement" as to the causes of and the remedies for the present economic crisis, the political leaders and those they represent seem incapable or unwilling to accept and act on the diagnosis. He rejects the argument that democracy is at fault and that you must have dictatorship to achieve control. In the long run, he thinks, the indispensable sanction for action by the leaders is consent on the part of the governed. To produce a society in which controlled planning will be accepted, on either the national or the international plane, Sir Norman places great emphasis on the improvement of the educational processes, and their orientation toward well-known liberal criteria. Whether, however, these criteria fit the conditions of the post-war world is a question which he fails to discuss, and as a result his argument does not meet the challenge of his critics. The space at his disposal is too meager to permit an exhaustive treatment of the problems with which he deals. His obser-

vations are not, however, as penetrating as might be expected—and wished for—from his fertile and well-stored mind.—PHILLIPS BRADLEY.

The pamphlet *No More War on Foreign Investments: A Kellogg Pact for Private Property* (Dorrance and Co., pp. 86), by F. W. Bitter and A. Zelle, is a brief to the effect that the United States should persuade its associates in the late war to reimburse German nationals for their properties "liquidated" by the said associates during and since the war. While the authors admit that the actions taken by the American authorities respecting German properties in the United States did not in the end prove confiscatory, they still contend that "by its entry into the war and its coöperation in framing the terms of peace, the United States has assumed a decisive responsibility for the terms of the treaty of Versailles and ought to use its influence today to rectify the measures adopted at Versailles to the injury of private property" (p. 74). Some Americans had thought that, whatever these responsibilities were, they had been declined by the Senate in 1920. Apart from its special purpose, however, this brochure has a real value. It summarizes in convenient form the measures taken by the different countries concerning enemy property during and since the war, the dispositions made by the treaty of Versailles and the other peace treaties, and the carrying out of these dispositions. While not pretending to be an exhaustive study, the pamphlet is well documented for its purpose, and on the whole closely reasoned. The authors argue for complete immunity of alien enemy property in war.—LLEWELLYN PFANKUCHEN.

Papers Relating to the Foreign Relations of the United States, 1918, Supplement 1: The World War, 2 vols. (Washington, Government Printing Office, pp. lxxxviii, 1–914; lxxvi, 915–1835) continues the steadily progressing publication of documentary materials in the files of the Department of State, and a is particularly welcome addition because of the significance of the period covered. Early in the first volume one comes upon President Wilson's "Fourteen Points" speech of January 8, 1918, and from thence throughout the eighteen hundred pages are presented great numbers of speeches, memoranda, letters, notes, cablegrams, and other documents dealing with such matters as neutral trade, shipping, peace proposals, the armistice, coöperation of the United States with the Associated Powers in transport, food supply, etc., relations of the United States with the Czechoslovak, Jugoslav, and other national movements, and relations of Latin America and the Far East to the war. There is the usual chronologically arranged tabular view of papers listed; and at the close of the second volume is a highly detailed index. Methods of editing are those already familiar to users of the series, and leave little to be desired.

In *Contemporary World Politics and Estonia* (*Nüüdne Maailmapolitika ja Eesti*) (Tartu, pp. 113), Professor Antonius Piip of Tartu University, formerly state head of Estonia and today its minister of foreign affairs, presents to his own people the substance of a series of lectures delivered during the summer of 1932 at the University of California at Los Angeles. Five pithy chapters deal respectively, from an original and distinctive viewpoint, with a geopolitical approach to European and Pacific problems, the League of Nations, Pan-Europe, disarmament and security, and Baltic problems. Readers of the REVIEW may find the substance of the last lecture reproduced in the *Annals of the American Academy* for July, 1933. The calm, dispassionate treatment of controversial topics and the eminence of the author, who draws upon a vast fund of personal experience, add to the value of the work. Frankly written with the purpose of popularizing difficult technical questions and arousing interest in foreign policy on the part of the Estonian public, the volume is nevertheless profound, scholarly, measured, and remarkably clear.—MALBONE W. GRAHAM.

Professor Charles C. Tansill makes an important contribution to the history of our Caribbean policy in his *The Purchase of the Danish West Indies* (Johns Hopkins Press, pp. xiii, 548). Based on exhaustive study of manuscript sources in Denmark, Germany, and the United States, this excellent study clears away some popular misconceptions as to German ambitions in the new world. It reproduces the author's Albert Shaw Lectures on Diplomatic History delivered at the Johns Hopkins University in 1931.

Fresh light is thrown on one phase of our Cuban diplomacy by the lengthy monograph of Dr. Amos A. Ettinger, *The Mission to Spain of Pierre Soulé, 1853–1855* (Yale University Press, pp. xi, 559). A portion of this work, which is based on extensive American and European archival material (although the Spanish archives for the period remained closed to the author) was printed as the Alexander Prize Essay for 1930 of the Royal Historical Society, London.

POLITICAL THEORY AND MISCELLANEOUS

The Century of Progress Exposition in Chicago is not the only current attempt to portray the advance that man has made, especially in America, in the last hundred years. *A Century of Progress* (Harper and Brothers, pp. 452), edited by Charles A. Beard, aims at the same panoramic disclosure. After the editor himself has started off the project with a chapter on the nature and historical development of the idea of progress, somewhat more than a dozen recognized authorities are given opportunity, each in a chapter, to describe "in non-technical language the outstanding events and achievements in their respective fields during the past century of Ameri-

can history." Frank O. Lowden writes on agriculture, Henry Ford (in collaboration with Samuel Crowther) on industry, William Green on labor, Jane Addams on social transformation, Watson Davis on natural science, Charles H. Judd on education, John Erskine on literature, and Dr. Beard himself on government and law. Political scientists will naturally be interested chiefly in what Dr. Beard has to say on this last-mentioned subject—perhaps interested more exclusively in this than they should be, considering that the motivations and conditions of political development have sprung so largely out of things that have happened or been done in other fields described. At all events, the facets in the kaleidoscope of political progress which Dr. Beard brings successively into view are: the preservation of the Union; the abolition of slavery; the extension of democracy; civil service reform; the quest for administrative efficiency; the transformation of political economy; growth of the "humane spirit" in government and law; and the "march of centralization." The thirty pages which a conscientious editor allowed himself for comment on these weighty matters admit of nothing beyond a few broad strokes. The purpose in hand has, however, been served adequately, and the resulting chapter may be read with profit by others than the laymen for whom it was obviously intended.—F. A. O.

Women in the Twentieth Century (McGraw-Hill Book Company, pp. xi, 364), by Sophonisba P. Breckinridge, is one of a series of monographs published under the direction of President Hoover's Research Committee on Social Trends and embodying scientific information assembled for the Committee report, *Recent Social Trends in the United States.* The study, which is thoroughly scholarly and comprehensive in its particular field, is somewhat restricted because the researches of the committee were confined entirely to the analysis of objective data, and this necessarily excluded many important phases of the existence of women in the last three decades. Miss Breckinridge has organized her materials in three chapters dealing, respectively, with the developments that have occurred since 1900 in the relation of women under three sets of conditions: "(1) those characteristic of their incalculably varied organization on a voluntary basis for the accomplishment of innumerable purposes; (2) those characteristic of their relationship as employed or employer; and (3) those determining their success or failure in their relation to government." The development of women's clubs and organizations and of women's political activities is treated chronologically. In discussing women's occupations, much attention is given to the interpretation of materials drawn from the Fifteenth Census. The salient features of the development of women's clubs since 1900 are "first federation, then coöperation, then specialization." In discussing women's occupations, attention is called to the in-

creased number of very young women in schools and in the labor market, to the increasing employment of adult and of married women, to the continued restriction on the range of choice of employment, and to the possible advantage to cheap female labor in a period of general unemployment. Miss Breckinridge says: "With reference to their public activity, the moment seems an unhappy one at which to attempt to take account of stock." Yet she concedes that women are making gains in their knowledge of the uses of governmental agencies and in their appreciation of the values of existing governmental forms. A most interesting objective evidence of the development of the attitude of women toward their own situation is offered by the presentation, in an appendix, of the *Declaration of Sentiments* (1848) and the National League of Women Voters' platform for 1932–34. —DOROTHY SCHAFFTER.

"I like your new book . . . immensely. It reads with tremendous interest. It should, in my opinion, be translated into the European languages." So wrote Lenin to "Comrade" M. N. Pokrovsky concerning the latter's *Brief History of Russia*, Volume I of which (pp. 295), translated by D. S. Mirsky, has recently been brought out in an English edition by the International Publishers. The author joined the Bolshevik party in 1905, participated actively in the second 1917 revolution, and from 1918 until his death in 1932 was assistant people's commissar for education; and it goes without saying that his *Brief History* is a Marxist interpretation of his country's development through the centuries. Starting with the first known appearance of man on the eastern European plains, he describes the growth of early Russian society, traces the rise of federalism and of trade, analyzes the growth of capitalism, and relates the story of revolutionary and working-class movements to the later years of the nineteenth century. Nowhere will one find an historical work from the Communist viewpoint that has been planned more cleverly or written more skillfully. By no means the least intriguing sections of the work, too, are the opening and closing chapters in which the author discourses on "General Notions on History" and "The Writers of Russian History Before the Marxists, and How They Wrote It."

In the summer of 1851, Charles A. Dana invited Karl Marx to write for his paper, the *New York Daily Tribune*, a series of articles on the German revolution of 1848 and the counter-revolutionary movements following it. Being fully occupied with the writing of his *Critique of Political Economy*, as well as still no master of English, the Socialist leader delegated the task to Friedrich Engels, who prepared some twenty articles, which, after being edited by Marx, were duly dispatched to and printed in the *Tribune*. Volume XIII in the Marxist Library now being issued by the International Publishers, New York City, is entitled *Germany: Revolution and Counter-Revolution* (pp. 155), and brings together in a highly con-

venient form all of the articles appearing in the series, together with three other contemporary Communist documents of considerable interest and importance. As an anonymous preface asserts, the book is no abstract historical document, but rather a living, revolutionary discussion of a great popular movement, the causes of its failure, and the tactics of the proletarian elements in their efforts to support and guide it.

Readers of *Recovery: The Second Effort* know full well the contention of its distinguished author that our post-war economic system no longer functions automatically and his insistence that haphazard improvisations are unlikely to create economic security. In his most recent brochure, *The Framework of an Ordered Society* (The Macmillan Co., pp. 60), Sir Arthur Salter sketches the system and the institutions which he feels a planned economic order will require. A chapter, "The Need for a New System," summarizes some of his previously published contentions. In the other chapters—"Institutional Self-Discipline" and "The Rôle of Governments and Economic Advisory Councils"—he adumbrates his essential framework for a planned society. The three lectures here printed were delivered in February, 1933, at Cambridge University, where Sir Arthur appeared as the first lecturer on a foundation established to honor Alfred Marshall.—HERBERT W. BRIGGS.

The third number in a useful series of Public Policy Pamphlets edited by Harry D. Gideonse is *Unemployment Insurance* (University of Chicago Press, pp. 30), by Mary B. Gilson. The author has succeeded in presenting the essentials of a complicated and controversial problem in compact and readable form. On the much-discussed question of whether contributions to unemployment insurance funds should be made by employers only (Wisconsin system) or by both employers and employees (Ohio system), Miss Gilson merely presents the opposing points of view, with brief indication of the respective supporting arguments.

Devoted chiefly to the general subject of the administration of justice, and edited by Raymond Moley and Schuyler C. Wallace, the May, 1933, issue of the *Annals of the American Academy of Political and Social Science* contains a total of nineteen papers dealing, in groups, with problems of general administration, problems of civil procedure, scientific methods in the courts, scientific studies of the courts, trends in legal education, and the devolution of justice. Among contributors to the symposium are Professors Charles G. Haines, Edson R. Sunderland, L. C. Marshall, Rodney L. Mott, Herman Oliphant, and K. N. Llewellyn.

Based on French and British, as well as American, manuscript material, Frank L. Owsley's *King Cotton Diplomacy* (University of Chicago Press, pp. xi, 617) furnishes a fresh and interesting treatment of the foreign relations of the Confederate States of America.

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CHARLES M. KNEIER AND CHARLES S. HYNEMAN
University of Illinois

AMERICAN GOVERNMENT AND PUBLIC LAW

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